



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

**Case Reference** : LON/00BK/OLR/2020/0462  
**HMCTS** : V: CVPREMOTE  
**Property** : 42 Weymouth Mews, London W1G 7EG  
**Applicants** : Iain Rackley and Bryony Rackley  
**Representative** : Mark Galtrey (Counsel)  
**Respondent** : Howard de Walden Estates Ltd  
**Representative** : Mark Loveday (Counsel)  
**Type of Application** : Enfranchisement  
**Tribunal Members** : Judge Robert Latham  
Marina Krisko FRICS  
**Date and venue of  
Hearing** : 19 January 2021 at  
10 Alfred Place, London WC1E 7LR  
**Date of Decision** : 9 February 2021

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**DECISION**

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

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties have provided a Bundle of Documents for the hearing.

**Decision**

The Tribunal determines that the premium payable by the Applicants in respect of the extension of their lease at 42 Weymouth Mews, London W1G 7EG is £343,782. The calculation is annexed to this decision.

## **Introduction**

1. This is an application made 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 and the terms for a new lease.

## **Background**

2. The background facts are as follows:
  - (i) The flat: 42 Weymouth Mews, London W1G 7EG;
  - (ii) The subject flat has two bedrooms, a living room, kitchen, a bathroom and a second toilet;
  - (iii) Date of Tenant’s Notice: 19 September 2019;
  - (iv) Valuation Date: 19 September 2019;
  - (v) Date of Application to the Tribunal: 15 May 2020;
  - (vi) Tenant’s leasehold interest:
    - Date of Lease: 25 July 1985;
    - Term of Lease: 75 years from 24 June 1985, with an unexpired term of 40.76 years;
    - Ground Rent: £800 for 10.76 years, rising to £1,600 pa for 15 years and £3,200 for the final 15 years.

## **The Hearing**

3. The hearing of this application took place on 19 January 2021. The Applicant tenants, were represented by Mark Galtrey (Counsel), instructed by Edwin Coe. He adduced evidence from Ian Asbury BSc (Hons) MRICS. The Respondent landlord was represented by Mark Loveday (Counsel) instructed by Charles Russell Speechlys LLP. He adduced evidence from Charles Taylor FRICS. Mr Loveday provided a Skeleton Argument. We are grateful to the assistance provided by both counsel and their experts.
4. At the start of the hearing, the parties requested a short adjournment, as a result of which the parties agreed the following:
  - (i) Valuation Date: 19 September 2019;
  - (ii) Unexpired Term: 40.74 year;
  - (iii) Capitalisation Rate: 7%;
  - (iv) Deferment Rate: 5%;
  - (v) Value of the ground rent: £18.048;
  - (vi) Relativity: 64.32%;
  - (v) There should be a 1% uplift to the long lease value to determine the FVPV;
  - (vi) The GIA of the subject flat is 1,112 sq ft;
  - (vii) There should be no discount for security of tenure;

- (viii) There should be no adjustment for the insurance provisions in the lease;
- (ix) There should be no adjustment for development value.
5. There had been a dispute between the parties as to the terms of the new lease. The lease places the obligation to insure the subject flat, which is not entirely satisfactory. In the event that the flat were to be damaged by an insured risk that occurs from somewhere else in the building, the tenant would have no right to enforce any third party to reinstate the lower floors. On 20 January, the parties confirmed to the tribunal that they had reached agreement on the terms of the new lease. Both Counsel agreed that the contractual provisions relating to insurance are not relevant factors in determining the premium.
6. The sole issue which this Tribunal is required to determine is the value of the unimproved unencumbered freehold value of the flat. The difference between the parties is substantial:
- (i) Mr Galtrey argued for unencumbered freehold value of £1,175,000 and a consequent premium of £292,187;
- (ii) Mr Loveday argued for unencumbered freehold value of £1,729,600 and a consequent premium of £425,880.

### **The Unencumbered Freehold Value of the Flat**

#### **The Subject Flat**

7. The subject flat at 42 Weymouth Mews is a second floor flat in a small three-storey purpose built block of two flats above a large double garage. It was constructed in the first half of the 20<sup>th</sup> century. The flat sits beneath a shallow double pitched slated roof. The roof space is included in the demise of the subject flat.
8. The two flats are entered via a communal street door to a small lobby with a shared staircase leading to the compact first landing from which both flats are entered. There is a further private staircase to the subject flat on the second floor. The garage, as it was at the time of the valuation, is entered from the west side of the building. Since the valuation date, the garage has been converted to office accommodation by the landlord. Planning approval had been granted before the valuation date. The subject flat does not have the use of a garage.
9. The repairing and insurance obligations in the two flats are both unusual. Mr Loveday described it as a “layer cake lease”. The lessees are required to insure their flats. The lessees are further required to keep in repair the external envelope of their flats. The lessee of the subject flat is therefore

liable to keep the roof in repair. The lessee of the first floor flat is not liable to contribute to any repairs to either the roof or the foundations. There is no liability for a service charge.

10. Weymouth Mews is in Marylebone. It would originally have served the grand buildings in Harley Street and Portland Place. It is well served by public transport and is close to Regent's Park. The flat benefits from having a long open aspect up the mews at the rear and good ceiling heights and well proportioned accommodation. The flat is unimproved and the layout reflects the lease plan.
11. To one side of the subject building is the Jacalope public house. This is styled as a smaller traditional London mews pub and has recently been refurbished. It is a gastro pub which is only open from Tuesday to Friday.

#### The Submissions of the Parties

12. Both experts are agreed that the best comparable is 41 Weymouth Mews, the first floor flat which sold in October 2020 on a long lease for £1.5m. This is slightly smaller than the subject flat (979 as opposed to 1,112 sq ft). This was sold in a modernised and improved state with fittings and facilities not present in the subject flat. However, in the subject flat the hallway space is much larger. Both flats have two bedrooms and a living room of similar sizes. No.42 has an ensuite toilet and shower. There is a separate bathroom and toilet.
13. Mr Asbury notes that No.41 was initially marketed by Chestertons in August 2016 for £2.3m, later reduced to £2.1m before being withdrawn. It was remarketed by Dexters in mid-2017 at a reduced price of £1,999m, before being withdrawn, having failed to attract interest. In August 2020, the flat was marketed for a third time by Savills at £1.575m. In October 2020, a sale was agreed at £1.5m, with completion on 20 November 2020. This equates to £1,532 psq, before any adjustments are made.
14. Mr Asbury, for the tenant, highlighted the advantages of No.41. He suggested that the layout was better, particularly with regard to the ensuite shower room. Given the absence of a lift, the first floor was preferable to the second floor.
15. Mr Taylor, for the landlord, argued that the subject flat benefited from its larger size. The hallways provided useful space that could be constructively used. It was an advantage to be on the second floor as there was no footfall from a flat above. It was further removed from noise from the pub. The subject flat benefited from access to the roof space which could be used for storage.

16. Both experts agreed that No.41 was in a much better condition. Mr Taylor suggested an adjustment of £100,000, Mr Asbury for one of £250,000.
17. The experts also disagreed as to what adjustment should be made for time, the valuation date being 19 September 2019 and the sale of No.41 being completed on 20 November 2020. This is a period during which there has been considerable uncertainty in the local property market caused by Brexit and Covid-19. The impact of these factors would depend on the nature of the purchaser, whether a foreign investor or a purchaser resident in the UK. The Tribunal was asked to consider four sources of evidence:
  - (i) The Land Registry Index for flats and maisonettes in Westminster which gives an average price of £853,354 (Sept 2019) and £871,755 (October 2020). An increase of 2.2%.
  - (ii) The Savills Research Prime London Residential Statistical Supplement for flats in Prime Central London. This is a quarterly index which gives 181.0 for September 2019 and 179.9 for September 2020. A decline of 0.61%.
  - (iii) The Savills In Focus Prime Central London Quarterly Data for Winter 2020 which shows a decline of 2.3% in Marylebone over the twelve months to Q3 2020. On the other hand, there were increases in other areas of Westminster, namely 3.5% in Notting Hill and 1.7% in Holland Park.
  - (iv) The Knight Frank Index for Prime London Sales shows a reduction of 4.5% over the twelve months October 2019 and October 2020. Mr Taylor stated that this figure accords with his assessment of the local market.
18. Mr Asbury makes a +0.61% adjustment for time and arrives at an adjusted rate of £1,056 psf, which produces a figure of £1,174,272 for the demised flat (1,112 sq ft). Mr Asbury rounds this up of £1.175m and asks the Tribunal to accept this as the unencumbered freehold value of the demised flat.
19. Mr Taylor makes a +4.5% adjustment for time and arrives at an adjusted rate of £1,541 psf, which produces a figure of £1,713,592 for the demised flat. However, he also considers the other comparables discussed below to derive a slightly higher figure of £1,553 psf and asks the Tribunal to accept a figure of £1,729,600 as the unencumbered freehold value of the demised flat.
20. The experts also had regard to a transaction of the subject flat. This had been owned by Mrs Delphine Rackley, Mr Rackley's mother. On 19 September 2019, Mrs Rackley (then aged 88) had submitted her Notice

of Claim for the lease extension. On 28 November 2019, she assigned the unextended leasehold interest, with the benefit of the Notice, to the Applicants. Mr Asbury had been told that the stated value was £925,000. He stated that this was a figure that had been accepted as the market value by HMRC, as there had been a CGT liability as Mrs Rackley had not occupied the flat. There was also a family consideration. Mr Iain Rackley has a sibling, and it was therefore important to ensure a robust valuation to ensure that Mrs Rackley's wealth was fairly distributed within the family. Mr Asbury had not advised on this transaction; the valuation was rather provided by Cluttons.

21. Mr Taylor rather relied on a value of £1.3m which was the value recorded at the Land Registry. Mr Asbury stated that the solicitors had accepted that they had made a mistake and had asked the Land Registry to make a correction.
22. In addition, both parties relied on a number of comparables. Unfortunately, despite a Direction from the tribunal that the experts should meet to exchange valuation calculations, they did not share the comparables upon which they sought to rely. They had no common comparables.
23. Mr Asbury relied on two sales in Weymouth Mews of flats with long lease: (i) Flat 5, 6 Weymouth Mews sold in June 2015 for £1m; (ii) Flat 3, 6 Weymouth Mews sold in December 2014 for £1.2m. Making adjustments for time, Mr Asbury derives figures of £921 and £1,039 psf. Mr Taylor contended that these were unreliable because of the dates of the sales.
24. Mr Asbury also relied on six comparables in W1 at (i) Flat 11, York Place Mansions, Baker Street; (ii) Flat 6 Winsford House, Luxborough Street; (iii) Flat 3, 146 Great Portland Street; (iv) Flat 3, 94 New Cavendish Street; (v) Flat 55 Melcombe Regis Court, Weymouth Street; and (iv) Flat A, 29 Devonshire Close. These range from the 2<sup>nd</sup> to 4<sup>th</sup> floor and had two or three bedrooms. The sale prices ranged from £945k to £1,44m. The GIA ranged from 581 to 1,055 sq ft. Adjusting just for time, these provided a range from £1,069 to £1,512, and an average of £1,280 psf. Mr Loveday commented that it was impossible to analyse these comparables given the limited evidence that was provided. A closer analysis suggests that they are not good comparables for the subject flat. Thus the comparable which gave the psf of £1,512 was only 889 sq ft, but had a third bedroom and two bathrooms. The flat which gave a psf of £1,469 was only 581 sq feet, but still had two bedrooms.
25. Mr Taylor relied on five comparables in W1 at (i) Flat 10, 29 Wimpole Street (ii) Flat 10 Dudley House, Westmoreland Street; (iii) Flat 2 Harmont House, Harley Street; (iv) Flat 1, 33-34 Devonshire Street (unexpired term: 80 years); and (v) Flat 2, 20 Cavendish Street

(unexpired term 41 years). These range from the 1<sup>st</sup> to 4<sup>th</sup> floor and had two or three bedrooms. The sale prices ranged from £725k to £1.95m. The GIA ranged from 570 to 1,132 sq ft. Significant adjustments had been made. For example, the flat in Devonshire Street which sold for £725k, had a GIA of 570 sq ft. The flat in New Cavendish Street sold for £1.5m, despite the fact that the unexpired term was only 41 years. Some properties had lifts. Adjusting for time, length of lease condition, style and location these provided a range from £1,512 to £1,507, and an average of £1,553 psf. Mr Galtrey contended that these comparables were not similar to the subject flat. He also suggested there was a surprising uniformity in the adjusted psf, the adjustments being made to secure this.

26. Mr Taylor has acted for the de Walden Estate for many years. He has also acted as a consultant valuer to the Grosvenor Estate. Mr Loveday argued that this gave him an excellent knowledge of the local market. Mr Galtrey responded that acting for landlord's in the area impacted upon his objectivity as an independent expert.

#### Our Determination

27. The Tribunal agrees with the experts that the sale of 40 Weymouth is the best comparable. We also have regard to the length of time for which this flat was on the market. We suspect that this did not reflect merely the asking price. It also reflects the fact that because of their situation, location and lease terms, these flats appeal to a particular type of purchaser. A successful sale depends upon whether such a purchaser is looking to buy when the flat is marketed.
28. We must consider what adjustments should be made to determine the unencumbered freehold value of the demised flat. We have been provided with lease plans for the two flats (at p.228 and p.282). We note that the subject flat is some 14% larger. However, this largely reflects the greater hallway space. The sizes of the living room and the two bedrooms are largely similar. Were a purchaser to have a choice of either flat at the same price, we suspect that the choice would reflect the preferences of the individual. A buy to let landlord might prefer No.41 because it has an ensuite shower room. A purchaser looking for a family home or a London base might accept the shared bathroom in the subject flat and prefer the greater hall space for a desk and the loft space for storage. A top floor flat might normally be preferable because there is no footfall, but the disadvantage is the stairs. The impact of the pub would be similar in both flats. We conclude that it is not necessary to make any adjustment for these factors as they tend to cancel each other out.
29. Both parties agree that an adjustment must be made because the subject flat is unmodernised whilst No.41 is in a much better condition. Mr Asbury suggests an adjustment of £250k, whilst Mr Tayler suggests £100k. The Tribunal is satisfied that £100k would be more than sufficient

to upgrade the bathroom and the kitchen and to install central heating. Some modest adjustments could also be made to the layout of the flat. Were the consent of the landlord to be required for these works, we are satisfied that this would be forthcoming. These works would have no adverse impact on the value of the landlord's interests. We remind ourselves that we are having regard to the impact of the works on the value of the flat, rather than the cost of the works. Some purchasers would wish to upgrade the bathroom or kitchen to meet their personal tastes regardless of the condition of the current fittings.

30. The Tribunal is further satisfied that some adjustment must be made for the provision in the lease for repairs. The lessee of the subject flat is liable for 100% of any of repairs. On the other hand, the lessee of No.41 has no liability in respect of costs to either the roof or the foundations. Mr Asbury suggests that an adjustment of £100k should be made in respect of this. Mr Tayler does not consider that any adjustment should be made. We are satisfied that our hypothetical purchaser considering whether to purchase Flat 41 or the subject flat would consider the unusual repairing covenant to be a relevant factor. We consider the figure of £100k to be manifestly excessive, and have adopted a figure of 25k.
31. Finally, the Tribunal considers what adjustment should be made for time. This Tribunal would normally have preferred the Land Registry Index for flats and maisonettes in Westminster. This is based on the largest basket of transactions and does not reflect any element of opinion. However, we do have regard to the research from Savills and Knight French which suggests that the market has moved in the opposite direction. The difference between the Savills and Frank Knight figures for Prime Central London are surprising. Whilst we recognise that there are different neighbourhoods in Westminster, we are far from satisfied that the subject flat is a typical Marylebone property. This is a period during which there has been considerable uncertainty in the local property market, the impact of which would depend on the nature of the purchaser, whether a foreign investor, a buy to let landlord, or someone who intended to occupy the flat as a family home or as a London base. Having regard to all these factors, we conclude that it would be inappropriate to make the 2.2% adjustment suggested by the Land Registry Index and make no adjustment for time.
32. We therefore take the purchase price of £1.5m to which we subtract £100k for condition and £25k for the repairing covenant. We therefore derive a long lease value of £1.375k to which we add the 1% uplift to reach an unencumbered freehold value of £1,388,750.
33. The Tribunal has also had regard to the transfer of the subject flat in November 2019. We accept the evidence of Mr Asbury that the short lease valuation given by Chestertons was £925k. Applying the agreed relativity of 64.32%, we derive a long lease value of £1.438k. This is slightly, but not significantly, higher than the figure that we have



assessed. This was not a market transaction and it would be wrong to use it more than a check for the figure that we have assessed.

34. We have had regard to the other comparables provided by the experts. However, they have not assisted us in our valuation. The two transactions at Weymouth Mews would have been helpful, but for the fact that these were more than four years before the valuation date. It does not assist the Tribunal where two experts do not discuss their basket of comparables. We expect experts to agree relevant comparables so that they can each analyse the same transactions, identifying which each consider to be the most relevant and the adjustments that need to be made. The absence of any agreement between the experts on this, confirms our view that sales within this block reflect their particular situation, location and lease terms. We have noted that even though the subject flat is 14% larger than the first floor flat, this does not justify the conclusion that the value is 14% higher. The layout of the flats and their location are the critical factors rather than their GIA.

### **Conclusion**

35. The Tribunal assess the unencumbered freehold value of the subject flat to be £1,388,750. We compute the premium payable to be £343,782. Our working calculation is set out in the Appendix.

**Judge Robert Latham**  
**9 February 2021**

### **RIGHTS OF APPEAL**

1. 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.
2. The application for permission to appeal must arrive at the Regional office within 28 s after the Tribunal sends written reasons for the decision to the person making the application.
3. 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.
4. 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.

## Appendix: Valuation of 42 Weymouth Mews, London, W1G 7EG

### Matters Agreed

Valuation date	19 <sup>th</sup> September 2019
Term	40.76 years
Value of ground rent	£18,048
Capitalisation rate	5%
Relativity	64.32%

### Matters Decided

Extended lease value	£1,375,000
Freehold value	£1,388,750
Existing lease value	£ 893,244

Ground rent £ 18,048

Freehold reversion 40.76 years  
£1,388,750 5% 0.1369 £ 190,120  
£ 208,168

Less  
Freehold reversion 130.76 years  
£1,388,750 5% 0.0017 £ 2,361 £205,807

### Marriage Value

Proposed £ 2,361  
£1,375,000

Less  
Existing £ 208,168  
£ 893,244  
£ 275,949 50% £137,975

Premium £343,782