



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

Case reference Code : **LON/00AC/OLR/2020/0853
V: VIDEOREMOTE**

Property : **Flat 19, West Heath Court, North End
Road, London NW11 7RG**

Applicant : **Fahima Jan**

Representative : **Mr Colin Hurst**

Respondents : **Deritend Investments (Birkdale)
Limited**

Representative : **Wallace LLP
Mr Eric Shapiro**

Type of application : **Lease extension**

Tribunal : **Judge Tagliavini
Mr K Ridgeway**

Place and date of hearing : **10 Alfred Place, London WC1E 7LR
V: VIDEREMOTE
7 April 2021**

Date of decision : **5 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: VIDEOREMOTE**. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The tribunal was referred to the applicant's bundle of documents numbered 1 to 304. The order made is described at the end of these reasons.

Summary decision of the tribunal

- (1) The tribunal finds that the premium payable by the applicant to the respondent for a 90-year lease extension of Flat 19, West End Court, North End Road, London NW11 7RG is £59,626.**
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The application

1. This is an application for the grant of a new lease/lease extension under the provisions of section 42 of the Leasehold Reform, Housing and Urban Development Act 1993.

Background

2. Under a lease dated 16 July 1986 made between Metropolitan Propertied (F.C.G.) Limited and Constance Irene Julia Donovan the applicant was granted a term of 99 years of the subject property at Flat 19, West End Court, North End Road, London NW11 7RG with effect from 29 September 1976.
3. By a Notice of Claim dated 12 February 2020 the applicant sought the grant of a new 90-year lease at a premium payable of £30,000. In a Counter Notice dated 7 August 2020 the landlord admitted the applicant's right to a new lease but asserted that the premium payable is £83,750.00.
4. Since the application was made, the parties' valuers agreed the following issues:
 - (i) Valuation date of 13 February 2020
 - (ii) Term granted of 99 years from 29/06/1976
 - (iii) Ground rent - £50 per annum until 25/03/2009; £100 per annum for the next 33 years and £200 per annum for the residue of the term
 - (iv) Unexpired term: 55.62 years
 - (v) Ground rent capitalisation rate: 6%

- (vi) Deferment rate: 5%
- (vii) Freehold value of the flat is worth 1% more than the long leasehold value
- (viii) GIA of 450 sq. ft (41.81 sq.m)
- (ix) There are no improvements that have added value
- (ix) The terms of the new lease

5. Therefore, the only issues in dispute for the tribunal's determination are:

- (i) Freehold value of the flat
- (ii) Existing lease value/relativity
- (iii) The premium payable for the 90-year lease extension with a pepper ground rent

6. West Heath court is made up of two blocks of purpose-built flats on five floors. Flat 19 West Heath Court, NW11 7RG ('the subject premises') are a ground floor flat comprising two rooms, kitchen and bathroom and does not benefit from any demised outside space. The subject flat was sold for £195,000 in August 2006

The applicant's evidence

- 7. The applicant sought to rely upon the expert valuation evidence of Mr Colin Hurst MRICS dated 29 March 2021. In his oral evidence to the tribunal, Mr Hurst relied upon his report as his evidence in chief and was cross-examined on this by the respondent's valuer Mr Eric Shapiro and answered the questions asked by the tribunal. In his report, Mr Hurst provided a valuation with the revised premium of £39,998.
- 8. In his report, Mr Hurst stated that he had had regard to the Court of Appeal case of *Munday v Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35 and the Upper Tribunal decision in *Deritend Investments (Birkdale) Limited v Ms Kornella Treskonova* [2020] UKUT 0164 (LC) although the latter had been published after the valuation date of the subject property). Mr Hurst also referred to *Mallory v Orchidbase* [2016] UKUT 468 (LC) in carrying out his valuation.
- 9. In his evidence Mr Hurst relied upon comparable properties located at Flats 10, 26A and 48 Waterlow Court NW11 7DT; Flats 114 and 126 Britten Close NW11 7HW and Flats 6, 9, 10 (2 transactions), 21 and 40 at the subject building of West Heath Court and supported this evidence with copies of Office Copy entries.
- 10. By comparing the value prices per square metre for Flat 10 West Heath Court with 24A Waterlow Court and Flat 21 West Heath Court with 48 Waterlow court then relating

them to the sale of 8 Waterlow Court he arrived at a value of £284,000. Mr Hurst then carried out a similar exercise for flats 126 Britten close and 114 Britten Close and concluded that the subject flat had a value of £310,000 as at the valuation date and having made a visual inspection of the inferior positioning of the subject flat (close to the e highway and service road and rubbish bins) he concluded that £310,000 was at the valuation date the extended lease value of the subject property.

11. In explaining his mathematical approach to the calculation of relativity, Mr Hurst adopted an approach that utilised data provided by the Office of National Statistics and the Land Registry to relate the price paid for the short lease to the price paid for the long lease in respect of his comparable properties. This method produced a revised price for the short lease as at the date of sale of the long lease. The revised price of the short lease was then divided by the sale price of the long lease to obtain an enfranchiseable relativity. Mr Hurst then went on to use the Savills Table for its 2016 graph as the number of years remaining of the short lease at its actual sale date, deducted the difference shown between the enfranchisable relativity and unenfranchiseable relativity to obtain an unenfranchiseable relativity.
12. Mr Hurst then found the average unenfranchiseable relativity from the two 2016 graphs (Savills and Gerald Eve). By considering the number of years of the short lease each comparable had remaining and the average unenfranchiseable relativity of the number of years remaining at the valuation date of the subject property. By deducing one from the other to find the difference in relativities between the valuation date of the subject property and the sales date of the short lease comparable. From this figure, Mr Hurst deducted the figure that represented the difference between the enfranchiseable and unenfranchiseable relativity. By applying this method to the comparable properties relied upon, Mr Hurst reached an average relativity of 80.870% (Appendix 5 of report).
13. Mr Hurst told the tribunal that he believed his approach followed the principles set out in *Munday v Trustees of Sloane Stanley Estate* [2018] EWCA Civ 35 and *Deritend Investments (Birkdale) Ltd v Ms Kornella Treskonova* [2020] UKUT 0164 (LC) and that he was adapting the graphs appropriately by using a combination of the Gerald Eve and Savills' graphs.
14. In his submissions to the tribunal, Mr Hurst stated that his approach to the valuation had been focused on the market evidence he had obtained from the use of sales of comparables properties in the NW11 area. Mr Hurst also stated that he tried to follow the approach taken in *Deritend*.

The respondent's evidence

15. The respondent relied on the valuation evidence of Mr Eric Shapiro BSc (EST MAN), FRICS, FCI Arb in a report dated 30 March 2021. Like Mr Hurst, Mr Shapiro relied upon his report as his evidence-in-chief and was cross-examined on it by Mr Hurst and answered questions asked by the tribunal. In his report Mr Shapiro provided a premium payable of £66,120. This was subsequently revised to £59,626 after Mr Shapiro's reduction of the FHVP value by 10%.
16. In his evidence, Mr Shapiro asserted that the subject property was located close to very high value properties in Golders Green and part of the Borough of Barnet, the largest of the London Boroughs.

17. Mr Shapiro stated that as there had been only one sale in the subject block since March 2017, which was of Flat 10, a five room flat and nearly three times the size of the subject flat on 17/01/2010 for £725,000, it was necessary to derive comparables from similar blocks in the NW11 area. Mr Shapiro relied on the sales of Flat 8 at Waterlow Court, Heath Close NW11, Flat 66 Heathcroft, Hampstead Way, NW11 and Flat 2 at Heathview Court, Corringway NW11. Mr Shapiro subsequently told the tribunal that another potential comparable Flat 24 Waterlow Court should be disregarded as it is nearly twice the size of the subject premises and the sale was concluded during the COVID-10 'lockdown' although the price was agreed beforehand.
18. Mr Shapiro preferred the comparable provided by 8 Waterlow Court as it is virtually the same size as the subject property and needs only one adjust for floor level, being on the second floor and not the ground floor. In a Table appearing at page 230 of the bundle Mr Shapiro set out the comparable properties he relied upon together with the adjustments made. Mr Shapiro derived adjusted rate per sq. ft. of £950 giving a FHVP of £427,500.
19. Mr Shapiro subsequently accepted in his oral evidence to the tribunal that 8 Waterlow Court is a more valuable property than the subject flat and therefore a reduction of 10% to FHVP value of the subject property was required (less 1%) of £380,941.
20. Mr Shapiro stated that he relied on the binding decision in *Deritend* and that the average of the Savills and Gerald Eve 2016 graphs for a lease of 55.62 years is 75.08% of the FHVP giving an existing lease value of £320,967.
21. In his closing submissions Mr Shapiro submitted that only the FHVP value and the relativity were in dispute. Mr Shapiro criticised the mathematical approach adopted by Mr Hurst to the valuation as this attempted to create a new form of graph using figures from the ONS and Land Registry data. Mr Shapiro asserted that reliance on this data was incorrect and illogical as it produced short lease values that were higher than the long lease values and this could not be correct. Mr Shapiro asserted that Mr Hurst should have conceded the relativity and focused upon the FHVP value.
22. Mr Shapiro also criticised the choice of comparable properties utilised by Mr Hurst as one was too close to a railway to be properly comparable.

The tribunal's decision and reasons

23. The Tribunal preferred the evidence of Mr Shapiro to that of Mr Hurst as it finds the evidence of the latter, illogical in part where the value of a short lease is higher than that of a long lease and therefore finds this evidence to be unreliable. The tribunal also finds that the reliance on ONS which is published as index figures rather than actual sales data to produce an index rather than a figure for relativity, was an unusual approach and not one that provided the tribunal with much confidence in its reliability.
24. The tribunal also finds that Mr Hurst has, unlike Mr Shapiro made no attempt to make any adjustments to his comparables to take into account their condition in comparison to the subject property. The tribunal finds that Mr Shapiro made the appropriate,

consistent adjustments to his comparables and conceded that a further adjustment of 10% was required to the FHVP.

25. Therefore, the tribunal finds that the premium payable as set out in Mr Shapiro's revised valuation (attached as Appendix I) is £59,626.

Name: Judge Tagliavini

Dated: 5 May 2021

Rights of appeal from the decision of the tribunal

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).

Appendix 1

Valuation for lease extension

Flat 19, West Heath Court, North End Road, London, NW11 7RG

Valuation Date	13/02/2020			
Lease Commencement	29/09/1976			
Lease Term	99.00	years	Expiry Date	28/09/2075
Unexpired Term	55.62	years		
Long Lease value	£380,940			
Freehold VP value	£384,749	+1% long lease value		
	Term 1	Term 2	Term 3	
Ground rent	£100.00	£200.00	£0.00	
Reversion years	22.11	33.51	0.00	
Capitalisation rate	6%			
Deferment rate	5%			
Compensation	£0.00			
Relativity	75.08%			

Diminution of Landlord's interest

Ground rent				£100	
YP	22.11	yrs @	6.00%	12.07113	
					£1,207
Rent Review 1				£200	
YP	33.51	yrs @	6.00%	14.30157	
PV of £1	22.11	yrs @	6.00%	0.27573	
					£789
Rent Review2				£0	
YP	0.00	yrs @	6.00%	0	
PV of £1	55.62	yrs @	6.00%	0.03913	
					£0
Reversion to VP value				£384,749	
PV	55.62	yrs @	5.00%	0.06629	
					£25,505
Value existing freehold					£27,501

L/ord's interest on reversion of new lease

FH VP				£384,749	
PV	145.62	yrs @	5.00%	0.00082	
					-£316

£27,185

Landlord's share of Marriage Value

Val. Tenant's interest new long lease			£380,940	
Val. l/lord's interest after reversion of new lease			<u>£316</u>	
			£381,256	
Less				
Val. tenant's interest existing lease	Relativity	75.08%	£288,870	
Val. l/lord's interest existing lease			<u>£27,501</u>	
			<u>£316,371</u>	
			<u>£64,885</u>	
Marriage Value at Compensation	50%			£32,443
				<u>£0</u>
PREMIUM				£59,626