



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

Case reference : **LON/00AK/OLR/2020/0583**

HMCTS code : **V: VIDEO**

Property : **2 Fox Lane London N13 4AH**

Applicant : **Mr A Yushchuk**

Representative : **In person**

Respondent : **Mr J W Brown and Mrs S A Wellesley-Brown**

Representative : **Mr Broadhurst MRICS of Jackson Green & Preston**

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

Tribunal members : **Judge Pittaway**
Mrs A Rawlence MRICS

Date of hearing : **26 May 2021**

Date of decision : **30 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were;

1. The applicant's bundle of documents (84 pages)
2. The expert report of Mr Broadhurst of Jackson Green & Preston (128 pages)
3. A revised valuation calculation from Mr Broadhurst (2 pages)

At the hearing the tribunal heard submissions from Mr Yushchuk and evidence and submissions from Mr Broadhurst MRICS of Jackson Green & Preston, acting for the respondent. The applicant's bundle contained an expert's report from Mr T Jackman MRICS of Aspects Surveyors Limited.

Summary of the tribunal's decision

- (1) The value of the existing lease is £351,915.
- (2) The value of the freehold with vacant possession is £420,000.
- (3) The premium payable for the new lease is £41,455.00.

The tribunal's valuation is attached to this decision.

The application

1. This is an application made by Mr Aliaksei Yushchuk pursuant to section 48 (1) Leasehold Reform Housing and Urban Development Act 1993 ("**the 1993 Act**") for a determination of the premium to be paid for a lease extension, or other terms of acquisition of the lease of the ground floor flat 2 Fox Lane London N13 4AH (the "**Property**").
2. By a notice of claim dated 13 December 2019, served pursuant to Section 42 of the Act, Mr Yushchuk exercised his right to claim a new lease of the property and proposed to pay a premium of £25,000 for the new lease.
3. On 23 January 2020 the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £56,000.00 for the new lease.
4. On 18 April 2020 the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The tribunal had before it a Statement of Agreed Facts dated 5 February 2021 which agreed
 - (i) Unexpired term at valuation date: 64.01 years
 - (ii) Capitalisation rate: 6%
 - (iii) Deferment rate: 5%
6. Neither valuer denied that the lease of the Property dated 10 January 1985 is for a term of 99 years from 25 December 1984 at a ground rent of £50, rising to £100 after 33 years, and £200 after a further 33 years.

The applicant's bundle also contained an official copy of a Deed of Variation of the lease dated 6 November 1995 from which page 2, which set out the variations permitted by the Deed, was missing. Neither party was able to provide the tribunal with a copy of the missing page, and neither were able to clarify how it had varied the lease.

7. It was clear at the hearing that it was agreed that the Property is a one-bedroom flat and that it enjoyed exclusive use of a garden.
8. Until the day before the hearing Mr Broadhurst, not having inspected the interior of the Property was assuming that the flat had a floor area of 63 m². On receipt of the applicant's bundle he adjusted this to 72m², being the floor area adopted by Mr Jackman in his valuation.

Matters not agreed

9. The existing lease value. The applicant contended that this was £345,625 and Mr Broadhurst for the respondent contended that it was £351,915.
10. The value of the extended lease with vacant possession. Mr Jackman contended that this should be £391,050 and Mr Broadhurst £435,000.
11. Relativity. The applicant's valuation gave a relativity of 87.5% while Mr Broadhurst argued for a relativity of 80.9%
12. The premium. The applicant's valuation placed this at £31,861. Mr Broadhurst amended his valuation at the hearing to argue for a premium of £49,700.

- 13.** Neither the applicant's notice nor the respondent's counter-notice sought any amendment to the form of the lease other than the amount of the premium and the provisions required by statute. However there was evidence in the applicant's bundle that the landlord had proposed certain amendments to the lease, some but not all of which the tenant had indicated that he was prepared to accept.

The hearing

14. The hearing took place on 26 May 2021. The applicant was unrepresented. The report of his valuer, Mr Jackman of Aspect Surveyors Limited was in the applicant's bundle but he did not attend the hearing. The respondent was represented by Mr Broadhurst MRICS of Jackson Green & Preston.
15. 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.
16. The applicant relied upon the valuation of Mr Jackman of 1 June 2019 and the respondent relied upon the expert report and valuation of Mr Broadhurst dated 17 May 2021 and his revised valuation submitted to the Tribunal on 25 May 2021.
17. The following case was referred to by Mr Broadhurst;
Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova [2020] UKUT 0164 (LC) ("**Deritend**")

Evidence and submissions

- 18.** Mr Jackman's report did not clarify the basis upon which he had reached his valuation other than to say that he had chosen, 'the direct comparison method of valuation appraisal', that he had had discussions with local estate agents and analysed market commentaries and data to determine his opinion of the value of the subject property. Mr Yushchuk gave unsupported oral evidence that the property had been valued in July 2017 at £347,000.
- 19.** Mr Yushchuk submitted that the floor area of the flat was not relevant to the valuation and argued that the layout of the flat was such that it was difficult to measure. When questioned by the tribunal Mr Yushchuk confirmed that since the lease was granted new double-glazed windows and a new bathroom had been installed. There was no off-street parking. The flat has gas central heating.
- 20.** Mr Broadhurst submitted that there is no direct comparable evidence for the sale of a short leasehold interest similar to the property. He used three comparables in Fox Lane to establish the freehold value of the

property, adjusting these for non physical and physical factors. He adjusted the date of sale of the comparable properties with reference to the price index for flats and maisonettes in the London Borough of Enfield from January 2017 to January 2020. He then adjusted the comparable prices to reflect distinguishing physical factors and weighted each comparable to arrive at a price per square metre to apply to the property to reach a FHVP value of £435,000.

21. Mr Broadhurst's referred the tribunal to three comparables, all of which he adjusted for both non-physical and physical features. The non-physical was the date of the sale of each comparable which he adjusted with reference to the price index for flats and maisonettes in the London Borough of Enfield. If the property had a ground rent he capitalised this at 6%.

- 2a Fox Lane is a two-bedroom flat on the first floor of the building of which the property forms part which, with a 125 year lease, sold on 23 February 2018 for £404,500, adjusted to valuation date with rent capitalised the rent at 6% to give a value of £397,225.23. Mr Broadhurst and increased the price by 5% 'to reflect subject property end link'.
- 6 Fox Lane sold on 18 October 2018 for £500,000 with a share of the freehold, time adjusted to £494,871.78. Mr Broadhurst added £35,000 for the extension, £10,000 for the cellar, £5000 for a summerhouse and £15,000 for a private rear garden. This gave a value of £429,881.78 which he again adjusted by 5% 'to reflect subject property end link'.
- 30a Fox Lane sold on 2 August 2017 for £436,000, with a share of the freehold, time adjusted to date of valuation to £417,025.85. Mr Broadhurst increased this by £10,000 to reflect that it enjoyed on-site car parking which is something that 2 Fox Lane could not achieve. He uplifted the price by 5% to reflect that the property is structurally detached.

22. Mr Broadhurst took a price (from his adjusted figures) per square metre based on their EPC certificates for each of the comparables and then weighted these, attributing a weighting of 40% to each of 6 Fox lane and 30a Fox Lane and 20% to 2a Fox Lane to give a freehold vacant possession value to 2 Fox Lane of £435,000.

23. Mr Yushchuk pointed out that 2a Fox Lane had to be a good comparable as it is in the same building and that 30a Fox Lane was in a different type of building. He stated that 6 Fox Lane was equivalent to 2 Fox Lane when it was sold in 2016 for £415,000, but that it had subsequently been extended to create a second bedroom.

24. Insofar as relativity is concerned Mr Broadhurst submitted that in the absence of market evidence, as he submitted was the case here, it was appropriate to rely upon graphs of relativity, and that he considered the

most appropriate graph to be that of Savills 2015 Enfranchiseable (sic) Graph of Relativity. He adopted the unenfranchiseable relativity of 80.9% to give consideration to the Act rights. He cross-referred to the Gerald Eve 2016 Enfranchisement Graph of Relativity which provides a relativity of 81.026%. He did not consider that the fact that the flat is not in prime Central London was a matter which necessitated an adjustment to the graphs he used.

25. Mr Jackman's valuation used a relativity of 87.5% without any explanation.

Reasons for the tribunal's determination

26. The tribunal has had regard to the valuation reports in the bundles, the evidence that it heard, and the case law referred to in reaching its decision. As appropriate these are referred to in the reasons for the tribunal's decision.
27. It is unfortunate that Mr Jackman did not attend the hearing so that the respondent did not have the opportunity of cross-examining him on his report. The tribunal have accordingly not been able to place as much weight on his report as it might have been able to do if he had attended
28. The tribunal does not consider that there is sufficient certainty as to the square meterage of any of the comparables to make this a useful basis of comparison. It has therefore looked at the physical configuration of the properties.
29. In weighting his comparables Mr Broadhurst only attributed 20% of the total price per square metre to 2a Fox Lane, attributing 40% to each of his other comparables, 6 Fox Lane and 30a Fox Lane. The tribunal do not consider this weighing to be appropriate. It considers that 2a and 6 Fox Lane offer the better comparables than 30a Fox Lane which is in a different type of building.
30. Following the decision in *Mundy* the preferred method of establishing relativity is to look to market transactions around the valuation date as the starting point for determining the value of the existing lease without rights under the 1993 Act.
31. The comparables offered by Mr Broadhurst assist the tribunal in establishing both the existing leasehold and the freehold vacant possession value of the property.
32. 2a Fox Lane is a good comparable for existing lease value as it is in the same building as the property. Its sale price adjusted to the valuation date gives a value of £395,596. However it is owned on a 125 year lease,

and benefits from a second bedroom, which on the evidence before the tribunal clearly affects value, Mr Broadhurst attributed a value of £35,000 to the addition of a second bedroom to 6 Fox Lane. Taking this into account, and the longer lease, the Tribunal accept Mr Broadhurst's valuation of the existing leasehold of the property at £351,915. It is not necessary to 'to reflect subject property end link', as this comparable is in the same building as the property.

33. For the freehold vacant possession value of the property the tribunal has had regard to the comparables at 6 Fox Lane and 30a Fox Lane, both of which own a share of the freehold. 6 Fox Lane is a good comparable as it is a ground floor flat. Taking its time adjusted value of £494,872 the Tribunal has deducted £60,000 to allow for the extra bedroom, cellar, summerhouse and a larger private garden than the property has giving an adjusted value to its freehold interest of £434,872.
34. 30 Fox is also useful comparable for the freehold vacant possession value. Taking its time adjusted value of £417,025 the Tribunal has had regard to the fact that it enjoys off street parking, which is not a facility that will be available to the property. It considers it more appropriate to deduct £15,000 (rather than the £10,000 proposed by Mr Broadhurst) to reflect this facility, giving an adjusted value of £402,025.
35. The Tribunal took an average of the freehold vacant possession values of the evidence provided by these comparables and accordingly find that the freehold vacant possession value for the property is £418,500 and the extended lease value is £414,315.
36. The figures adopted by the Tribunal give a relativity of 84.08%. Following *Mundy* the Tribunal has based its value of the existing lease on the available market transactions around the valuation date. It cross-checked its value against the relativities proposed by the Applicant (87.5%) and the Respondent (80.9%) and note that the relativity it has adopted sits comfortably between these two proposed relativities.

The form of lease

37. The Tribunal noted from the papers before it that the Respondent had proposed varying the lease to provide for the landlord to insure the structure of the building with the tenant contributing a proportion of the cost. The form of the lease was not a matter before the Tribunal to decide, however it would encourage the parties to consider making these amendments to the form of the lease. Section 57(6) contemplates that the parties may between themselves agree variations to the terms of the new lease.

The premium

- 38.** Taking the existing leasehold value, extended leasehold value and freehold vacant possession value found by the tribunal for the property the tribunal determine that the premium is £41,455, as set out in its valuation in the Appendix.

Name: Judge Pittaway

Date: 30 June 2021

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).

APPENDIX

Valuation

Valuation of 2 Fox Lane, London N13 4 AH					
Freeholder's Present Interest					
Term					
Initial ground rent		£50			
initial rent expired		0	£0		
Increased ground rent		£100			
YP 31.01 yrs @6%	13.3		£1,393.00		
Increased ground rent		£200			
YP 33 yrs @6%	14.23				
PV £1 in 31.01 years @6%	0.16415	2.3358545	£467		
		Term Total	£1,860		
Reversion					
Freehold VP	£418,500				
PV £1 in 64.01 years 5.5%		0.04402	£18,422.37	£20,283	
Present interest					
After extension	418,500				
PV of £1 154.01years at 5%		0.0005453	£228.21	£228	
Diminution				£20,054.63	£20,283
Marriage Value					
Value after lease extension					
proposed freeholders interest			£228		
proposed leaseholders interest			£414,315	£41,4543	
less					
existing freeholder's interest		£20,283			
existing leaseholder's interest		£351,915		£372,198	
Marriage Value				£42,345	
landlord share 50%				£21,172.5	£21,172

Lease Extension Premium					<u>£41,455</u>
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