



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

Case reference : **LON/00AW/OLR/2021/0650**

HMCTS code : **P: CVPREMOTE**

Applicant : **Clementi Limited**

Representative : **Mr Smith in person on behalf of the Applicant**

Respondent : **Tpel Investments Limited**

Representative : **Mr Buckpitt of Counsel**

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

Tribunal members : **Tribunal Judge I Mohabir
Mrs S Phillips MRICS**

Dates of hearing : **5 and 6 July 2022**

Date of decision : **7 September 2022**

DECISION

Summary of the Tribunal's decision

- (1) The appropriate premium payable for the new lease is **£694,000**.

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 Flat 14 Pelham Court, 145 Fulham Road, Chelsea, London SW3 6FH (the “property”).
2. A notice of claim dated 23 December 2020 (“the notice”) was served pursuant to section 42 of the Act by Filtrust Limited exercised the right for the grant of a new lease in respect of the property. The notice proposed a premium of £520,000. On 13 January 2021, this was assigned to the Applicant.
3. At the time, the existing lease is dated 21 July 1971 for a term of 60 years less 3 days from 25 March 1969 and expiring on 22 March 2029 (“the lease”). The Applicant purchased the lease on 29 April 2021 for £967,000. By a Deed dated 30 March 1990, the lease was varied, which included varying the ground rent to £200 per annum from 25 March 1999 to 24 March 2011 and from 25 March 2011 to term date at the rate of £300 per annum.
4. On or about 9 March 2021, the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £1,094,200 for the grant of a new lease.
5. The parties were unable to agree the premium payable and the Applicant made an application for a determination of those terms on 29 July 2021.

The issues

6. The terms of the new lease had been agreed. The issue outstanding between the parties is the premium payable for the new lease in accordance with section 56(1)(b) and Schedule 13 to the Act.

Matters agreed & Not Agreed

7. These are set out in the statement agreed by the respective valuers instructed by the parties as follows.

The matters agreed are:

1. Valuation Date: 23 December 2020
2. Lease Expiry Date: 22 March 2029
3. Unexpired Term of Lease: 8.25 years
4. Capitalised Value of Ground Rent: £1,988
5. Extended Lease Value Relative to FHVP: 98%
6. Indexation for time: Savills
7. Gross Internal Floor Area (GIA): 711 square feet
8. Deferment Rate: 5%

The matters in dispute are:

1. Notional unimproved FHVP value
2. Existing Lease Value/relativity
3. Discount (if any) for Schedule 10 1989 Act rights

These are each dealt with in turn below.

The hearing

8. The hearings in this matter took place on 5 and 6 July 2022. The Applicant was represented by Mr Smith who, although a Solicitor by profession, appeared in a personal capacity on behalf of the Applicant. The Respondent was represented by Mr Buckpitt of Counsel.
9. The property was inspected by the Tribunal prior to the hearing. It is a 1930s purpose-built mansion block constructed over the lower ground, ground and five upper floors, with retail units at ground floor level. It benefits from a porter and communal garden to the rear. It is located on the raised ground floor, with 2 bedrooms, reception, kitchen, and shower-room/WC. It is at the rear of the block and overlooks the communal garden. The Tribunal found the property overall to be in an unmodernised condition.
10. The Applicant relied upon the expert report and valuation of Mr Marks FRICS dated 17 June 2022 and the Respondent relied upon the expert report and valuation of Mr Saxby MRICS dated 21 June 2022 who also both gave oral evidence at the hearing.

FHVP Value

11. Having considered the evidence given by both valuers about their analysis of the comparable properties they relied on, the Tribunal made the following adjustments, which is summarised in the schedule annexed hereto.
12. As will be noted, the Tribunal's approach was similar to that of the Respondent's valuer, Mr Saxby. Specifically in relation to the

adjustments made to the comparable evidence for the valuation and arriving at an average across the basket rather than a weighted approach. As adjustments had already been applied to each individual property used for comparison it was felt that further weighting for those properties was not required.

13. The Tribunal was satisfied the extent of adjustments to the comparable evidence that the Applicant was seeking were appropriate. The Tribunal was also satisfied that adjustments to Flat 15, Pelham Court for the lift and bathroom were not required.
14. In relation to the adjustments made to Flat 25, Pelham Court, the Tribunal did not consider that a heavy discount should be applied for the benefit of a view that the Applicant's were arguing for given that the evidence provided demonstrated that the views were in fact impeded by the flat roof immediately beneath and in front of this property.
15. Considering the amendments to the adjustments made by the Tribunal and weight applied to the evidence, the Tribunal determines a rate of £1,308 psft, which leads to FHVP value of £929,988.]

Existing Lease Value/Relativity

16. The Tribunal considers a relativity figure of 15% to be appropriate in this case which is in line with the approach set out by Mr Saxby. Both the market evidence provided and the analysis undertaken supports this approach. The Tribunal have therefore arrived at a figure of £139,498 for the existing lease value.

Discount for Schedule 10 1989 Act Rights

17. On this issue, the Tribunal agreed with the following submissions made Mr Buckpitt that no discount should be applied for any such rights. This issue concerns the theoretical risk that the tenant at the term date has the right to remain as an assured tenant, by virtue of Schedule 10 to the Local Government and Housing Act 1989.
18. The Tribunal accepted that, as a matter of law, the tenant must be an individual (rather than a company, which is not entitled to statutory protection). On this basis alone, the submission made by the Applicant in favour of a discount fails. Furthermore, at the valuation date the lessee was a company. The Applicant is also a company. During the last 7 years of the term, the landlord's consent to assign or underlet is required. The landlord is entitled to refuse consent on the basis that security of tenure will be obtained.
19. The Tribunal also accepted the submission that a significant number of decisions make no allowance because the rent is a market rent¹ and the Applicant had not been able to establish with evidence that a deduction

¹ see Hague at 33-07

is appropriate in this case.

20. Accordingly, the Tribunal determines the appropriate premium to be **£694,000**. A copy of its valuation is annexed to this decision.

Name: Tribunal Judge I Mohabir **Date:** 7 September 2022

Tribunal's Valuation

Valuation Date (VD)	23.12.2020
Unexpired Term	8.25
Ground Rent at VD	£300.00
Capitalisation Rate	5.00%
Deferment rate	5%
Extended Lease Value	£911,388.24
Freehold Value	£929,988.00
Relativity	85.00%
Existing Lease Value	£139,498.20
GIA	711 sq ft

Calculations

Diminution of Freehold

Ground Rent Term 1

Years Purchase	8.25 years @	%	300	
			<u>6.6273</u>	£1,988.19

Reversion

Capital Value

PV of £1 in	8.25 years @	%	929,988.00	
			<u>0.6686</u>	£621,790
				£623,778

less Freehold after Extension

Capital Value

PV of £1 in	98.25 years @	%	929,988.00	
			<u>0.0083</u>	£7,718.90

£616,059.27

Marriage Value Calculation

Value of Proposed Interests

Freeholder	£7,719
Leaseholder	<u>911,388.24</u>
	£919,107

less

Value of Existing Interests

Freeholder	£623,778.17
Leaseholder	<u>£139,498.20</u>
	£763,276.37

Total Marriage Value

£155,830.77 £

50% Share

£77,915.39

Total Premium

£77,915.39
£693,974.65

Rounded

£694,000

	Tribunal Adjustments		
Property	Total Adjustment	Comments	Adjusted rate pdf
Flat 15 Pelham Court	5.0%	Condition is superior to Flat 14 particularly the bathroom therefore an adjustment of 7.5% made for that. Being a one bedroom flat in the middle of Covid would have been a big disadvantage and something that continued to be reflected in the price that was paid in the end - hence an adjustment for this to uplift the price to reflect the benefits of a two bedroom property. Although size is accounted for in rate per sq. ft. we think there should still be an adjustment made for market sentiment toward 1 bedroom flats. We do not agree with Mr Marks argument on an adjustment for the lift nor for the bathroom.	£1,382.18
21 Thurloe Court	-7.0%	No weighting attached to the fact that flat was designed by Nina Campbell as it is a dated design and undertaken some time ago. First floor flat but at Thurloe Court we do not think they would have the same impeded view and therefore the value attributed to this is slightly higher. Plus the windows for the flats are larger so the light and view increased. Adjustment in rate to reflect no communal garden.	£1,323.39
29 Thurloe Court	-18.0%	3% to account for the views and elevated position. Additional shower room to be accounted for. OS makes adjustment for proportions and amenities but given that we are arriving at a rate per sq. ft. we feel that the proportions angle falls away. Adjustment due to no communal garden.	£1,174.67
26 Crompton Court	-15.0%	Completely different building to the subject property so adjustments made for lack of view and location. Additional shower room needs to be deducted for. No communal garden also adjusted for. States not recently	£1,202.75

		modernised so assume same condition as subject property.	
Flat 25 Pelham Court	-8.0%	First floor flat to the front. The aspect may be slightly improved but all photos in the particulars shows that you can see the parapet/flat roof for the shop. Once you factor in the road noise the total deduction is 3%. Property does appear to be in very good condition so 5% adjustment made for this. Flat has a comparable GIA to the subject property.	£1,464.07
4 Thurloe Court	0.0%	Accessed via an external covered walkway and no outlook at the rear (looks out to brick wall). OS has not considered this comparable due to external walkway. Tribunal would agree with this approach.	
Flat 71 Pelham Court	-3.0%	5th floor flat so adjustment for benefit of the view. An adjustment was made to account for the eaves	£1,306.59

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).