



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

Case reference : **LON/00AJ/OLR/2022/0622**

HMCTS code : **V: VIDEO**

Property : **Front Ground Floor Flat 39 Melbourne
Avenue London W13 9BX**

Applicant : **Mr B M Mian**

Representative : **Ms P Harrington**

Respondent : **D. Parton, Z Graham, R Tayn**

Representative : **Mr G Pack**

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

Tribunal members : **Judge Pittaway
Ms M Krisko FRICS**

Date of hearing : **15 March 2023**

Date of decision : **24 March 2023**

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 were contained in a bundle of 461 pages, and a skeleton argument from Mr Pack of 8 pages.

At the hearing the tribunal heard evidence from Ms Harrington for the Applicant and Mr Pack for the Respondents and submissions from each of them on behalf of their respective clients.

Summary of the tribunal's decision

- (1) The value of the existing lease is £224,981
- (2) The value of the extended lease is £278,337
- (3) The value of the freehold with vacant possession is £281,149
- (4) The premium payable for the new lease is £35,187

The tribunal's valuation is attached to this decision.

The Application

1. This is an application made by Mr Baider Mehmood Mian 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 front ground floor flat 39 Melbourne Avenue London W13 9BX (the "**Property**").
2. By a notice of claim dated 15 December 2021, served pursuant to Section 42 of the Act, Ms C K Casagrande and Mr J B Gater, attorney administrators of the estate of Avery Joyce Mortlake exercised the right to claim a new lease of the property and proposed to pay a premium of £26,625 for the new lease.
3. On the respondent landlords served a counter-notice admitting the validity of the claim and counter-proposed a premium of £47,650 for the new lease.
4. The benefit of the notice was assigned to Mr Mian by Ms C K Casagrande and Mr J B Gater on 3 February 2022.

5. On 8 August 2022 the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

6. The tribunal had before it a Statement of Agreed Facts dated 4 January 2023 which agreed
 - (i) Valuation date: 16 December 2021
 - (ii) Unexpired lease term at valuation date: 59.27 years
 - (iii) Ground rent: £100 increasing to £150 p.a. on 25.12.49.
 - (iv) Deferment rate: 5%
 - (v) Floor area of flat: 358 ft²
 - (vi) Value of flat on a freehold VP basis: extended leasehold value + 1%
7. At the hearing the valuers agreed that the value of the capitalised rent was £1,615
8. It was clear at the hearing that it was agreed that the property is a studio flat consisting of a lounge/bedroom, separate kitchen/dining room and a shower room/WC. The flat has its own garden, at the rear of the property and remote from the flat. The flat was in a poor state and condition when sold by Ms C K Casagrande and Mr J B Gater, by auction on 17 December 2021 for a price of £192,000.
9. The form of the proposed lease was agreed.

Matters not agreed

10. The existing lease value. Ms Harrington, for the applicant, contended that this was £215,602 and Mr Pack, for the respondents contended that it was £239,681, working on a 'top down' basis.
11. The value of the extended lease with vacant possession. Ms Harrington contended that this was £215,602 and Mr Pack that this was £298,822.
12. The premium. Ms Harrington's valuation placed this at £25,000. Mr Pack placed this in his valuation at £41,148.

Evidence and submissions

Long lease and freehold vacant possession value

13. For the applicant Ms Harrington provided 6 comparables to support her valuation of the flat with an extended lease at the valuation date,

- Flat 8 Lenan Court 31 Churchfield Road W13 9NQ
 - Flat 2 53 Argyle Road W13 0LW
 - 4a Bonchurch Road W13 9JE
 - 71 Pursewarden Close London W13 9PW
 - Flat 8 12 Sutherland Road London W13 0DT
 - 2 Highcliffe Clivedon Court W13 8DP
14. Ms Harrington stated that all the comparables were studios with the exception of 71 Pursewarden Close which is a one bedroom flat but which she had included as it was built as a studio but subsequently subdivided. Ms Harrington adjusted the values per square foot achieved by her comparables to allow for off-street parking (which in her opinion will increase the value). Ms Harrington stated that the flats sold after the valuation date were likely to have achieved a higher rate per square foot and in her experience smaller properties achieve a higher rate per square foot. Ms Harrington considered that development potential would have increased the price paid for 4a Bonchurch Road. Of her comparables she considered Flat 2 53 Argyle Road to be the best comparable. It sold in February 2022 for £239,950, equivalent to £716/sq.ft. Ms Harrington valued the long lease of the flat at £252,500.
15. In cross examination Ms Harrington confirmed that she had made no adjustment to the values of the comparables to reflect that a flat might be in a noisy or quiet location, might pay a high service charge, or have access to a communal garden rather than its own private garden. Ms Harrington also stated that it was not necessary to distinguish between a property with a lease of 163 years (2 Highcliffe) and one which has a share of the freehold. Not all her comparables evidenced Ms Harrington's submission that smaller properties generally achieve a higher price per square foot. Ms Harrington stated that this was a general rule but not the only basis for valuation. Ms Harrington did not accept that taking a rate per square foot was the sole factor to be taken into account in valuation, she said it was necessary to look at the whole tone.
16. Mr Pack put to Ms Harrington that her long leasehold value of £252,500 was less than the total cost to the applicant of the price paid at auction (£192,000) plus the cost of repairs (£38,000) plus the premium she calculated to extend the lease (£25,000), a total of £255,000. And that did not take into account fees likely to be incurred in the lease extension. Ms Harrington said that it was not her role to judge whether the applicant had made a good deal but to value using the comparables.
17. Mr Pack provided 9 comparables, some of which were the same as Ms Harringtons.
- 4a Bonchurch Road
 - Flat 2, 53 Argyle Road
 - 12b Sutherland Road W13 0DT
 - 71 Pursewardens Close
 - 8a Hollingbourne Gardens W13 8EN

- 2 Cliveden Court
 - Flat 3, 28 Melbourne Avenue W13 9BT
 - 64b Westfield Road W13 9JA
 - 22 Westfield Road W13 9JL
18. Mr Pack adjusted his comparables for time using the Land Registry House Price Index for L B Ealing, tenure (so that they are referenced back to a notional freehold value) and features such as gardens, off street parking, a significant service charge, noisy or quiet location, the floor on which the flat is situated and the condition in which the flat was sold. Mr Pack made a deduction on 64b Westfield Road to reflect that it is part of a commercial building. His adjustments gave him an adjusted average rate per square foot of £843 for the notional freehold, £301,840 the notional freehold value of the flat with vacant possession and an extended leasehold value of £298,822.
 19. Ms Harrington drew Mr Pack's attention to the fact that 8a Hollingbourne had not sold. It had been withdrawn from the market. Mr Pack recalculated his figures excluding this flat to arrive at a freehold value of £300,800 and an extended leasehold value of £297,800.
 20. In cross-examination Mr Pack expressed the view that it was unlikely that 4a Bonchurch had development value. All the other houses in the road that had undertaken loft conversions had been whole houses, not studio flats. When challenged on the time adjustment made for Flat 2 53 Argyle Road he stated that the time adjustment with reference to the Land Registry House Price Index had been made at the time of his report. Adjustments move as more sales are registered at the Land Registry. Mr Pack considered 71 Pursewardens Close an appropriate comparable although now a one bedroom flat as it had been converted from one room to two small rooms. He considered the layout, with the bathroom only accessible through the bedroom to be detrimental. Ms Harrington put to Mr Pack that the flat had only sold in July 2022 not February as he had stated.
 21. Ms Harrington put to Mr Pack that his last three comparables were inappropriate as they were all one bedroom flats. Mr Pack stated that he thought it appropriate to use them.

Existing lease value

22. Ms Harrington relied on the 'real world' evidence of the sale of the flat by public auction on the valuation date. Ms Harrington submitted that the condition of the flat on the date of the auction would have informed the bids and that the sale price should be adjusted upwards to arrive at a value for the flat in good tenantable repair. Ms Harrington adjusted the sale price upwards by £38,000, based on details of the cost of the works subsequently undertaken given to her by the applicant. These were detailed in a schedule in the bundle. Ms Harrington then adjusted the sale price to arrive at a hypothetical value of the flat on the assumption that the tenant does not have the right to extend the lease. To do this she adopted the Savills' table which gives a value of 'Act

- Rights' of 6.26% to a lease with 59.27 years remaining. This resulted in an existing lease value of £215,602.
23. Mr Pack cross-examined Ms Harrington as to what evidence she had to support her attributing £38,000 to the cost of repair. Ms Harrington stated that she had obtained these figures from the applicant. Mr Pack put to Ms Harrington that it would be more appropriate to make the 6.26% 'Act Rights' deduction before adding the cost of repairs to the price achieved at auction. Ms Harrington said that she considered her approach to be logical.
 24. Mr Pack also cross-examined Ms Harrington on the relativity of 85.38% that was achieved by using her adjusted existing lease value and her long lease value of £252,500 (85.38%) when compared to the relativity graphs which show a relativity for a lease of 59 years in the region of 77%. Ms Harrington stated that she had taken the real world value of the existing lease and an appropriate market value for the long leasehold value, and that the use of relativity graphs was only relevant where there was no market evidence.
 25. Mr Pack's valuation provided various valuations of the existing leasehold value but at the hearing he confirmed to the Tribunal that his preferred approach was to adopt a 'top down' approach i.e. start from the freehold vacant possession value of the flat and to use the recognised relativity graphs of Gerald Eve and Savills and then average the results from these, citing the decision in *Deritend Investments (Birkdale) Ltd v Ms K Treskonova* [2020] UKUT 0164 (LC) as authority for the use of these graphs. For a lease of 59 years the average relativity value would be 77.75%.
 26. Mr Pack accepted that if there is a sale of a property with a short lease this is good evidence with regard to relativity however he invited the tribunal to reject the private auction of the subject flat as good evidence on the grounds that it was not known how widely it was marketed, the sale agent was not a local agent, it is not known if the property was offered for sale by private treaty beforehand, the administrators would have been seeking to release funds quickly, it would not have been available to buyers requiring a mortgage, and the likely buyer would be an investor looking for a bargain.
 27. Mr Pack referred the tribunal to the decisions in *Brickfield Properties Limited v Ullah, Singh and Alam* [2022] UKUT 025 (LC) ('**Brickfield**') (and *Properties AY &U Ltd v Barham House Freehold Limited* [2022] UKUT 231 (LC) ('**Properties AY &U**') as authorities for his submission that auction sales are not good evidence.
 28. Mr Pack told the tribunal that he had cross-checked his existing leasehold value by taking the auction sale price and working up from there. He adjusted the sale price 6.26% for the Savills Value of Act Rights and then adding £50,000, to achieve an existing leasehold value

of £229,981, giving a relativity of 76.19% compared to the average graph figure of 77.75%.

Reasons for the tribunal's determination

- 29.** 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.

Long lease and freehold vacant possession value

- 30.** The Tribunal finds the value of the extended lease is £278,337 and the value of the freehold with vacant possession is £281,149
- 31.** The tribunal prefers the more precise manner in which Mr Pack has adjusted his comparables to the manner in which Ms Harrington has adjusted hers. While both parties referred to 71 Pursewardens Close, the tribunal find that on the basis of the details provided to it, it is not an appropriate comparable, nor is 22 Westfield as both these flats have two rooms and a separate kitchen.
- 32.** In the absence of any reasons as to why the tribunal should not adopt a rate per square foot in valuing the flat this is the basis that the tribunal has adopted. The Tribunal has looked to Mr Pack's adjusted average price per square foot for his comparables, excluding 8a Hollingbourne Gardens W13 8EN, 71 Pursewardens Close and 22 Westfield Road W13 9JL, and finds, on the basis of the remaining adjusted comparables of Mr Pack, that an appropriate average rate per square foot is £785.33 per square foot, which gives a freehold vacant possession value of the flat of £281,149.

Existing lease value

- 33.** The tribunal value the existing lease at £224,981
- 34.** Following the decision in *Mundy v Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35 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.
- 35.** From the details of the bids at the auction set out in the bundle it is clear that there were various bidders for the flat and the tribunal find that the price achieved for the flat at the sale by private auction within one day of the valuation date is good market evidence of its value. It does not accept the grounds set out in paragraph 26 above, upon which Mr Pack invited it to reject the auction sale price, as there was no evidence before the tribunal to substantiate that any of these grounds impacted on the price achieved. The decisions in *Brickfield* and *Properties AY &U* confirm that on the specific facts of those cases

auction sale prices may not be good evidence but they do not rule out that an auction may provide good evidence and the tribunal find that it did in this matter.

36. The cost of repair of £50,000 given by Mr Pack was not supported by any evidence, and the schedule of works provided by Ms Harrington was not supported by invoices. In the circumstances the tribunal find it appropriate to allow more than £38,000 as the cost of the works but are not persuaded that the appropriate figure is as high as £50,000. It has therefore adopted a cost £45,000 as a balance between the two figures given by the parties in their evidence.
37. The tribunal agree with Mr Pack that it is appropriate to make allowance for 'Act Rights' of 6.26% before adding on the cost required to put the property in a good state of repair.
38. The tribunal therefore find the value of the existing lease to be £224,981

The premium

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 £35,187 as set out in its valuation in the Appendix.

Name: Judge Pittaway

Date: 24 March 2023

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

TRIBUNAL VALUATION – 39 Melbourne Avenue, London W13 9BX

Existing lease	£224,981	
Extended lease	£278,337	
Freehold	£281,149	
Relativity	80%	
Ground rent agreed		£ 1,615
<u>Reversion</u>		
PV 59.27 yrs.	£281,149	
5% 0.05548		<u>£15,598</u>
		£17,213
Less:		
FH proposed interest	£281,149	
PV 149.27 yrs. 5% 0.00069		- <u>£194</u>
Freehold interest		£17,019
<u>Marriage Value:</u>		
Value after extension	£278,337	
FH interest	£ 194	
Less:		
Existing lease	£224,981	
Freehold present interest	£ 17,213	
	£ 36,337	

50%		<u>£18,168</u>
<u>Premium</u>		<u>£35,187</u>