



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

**Case reference** : **LON/00BK/OLR/2022/0535**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Subject property** : **207 Ashley Gardens, Emery Hill Street, London SW1P 1PA**

**Applicant** : **(1) Mr Nigel Collins  
(2) Mrs Linda Collins**

**Representative** : **Ms Robyn Cunningham of counsel**

**Respondent** : **Daejan Investments Limited**

**Representative** : **Ms Nicola Muir of counsel**

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

**Tribunal members** : **Judge S Brilliant  
Mr N Martindale FRICS**

**Date of determination and venue** : **31 January and 01 February 2023 at 10 Alfred Place, London WC1E 7LR (Remote)**

**Date of decision** : **14 April 2023**

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**DECISION**

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**Summary of the Tribunal's decision**

The appropriate premium payable for the new lease of the Flat is **£259,566**.

### **Background**

1. This is an application made by the applicant leaseholders 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 new lease of 207 Ashley Gardens, Emery Hill Street, London SW1P 1PA (“the Flat”).

2. By a notice of claim dated 07 January 2022, served pursuant to section 42 of the Act, the applicants’ predecessor in title Mr James Dunn (as personal representative of the late His Honour William Dunn) exercised the right for the grant of a new lease in respect of the Flat.

3. By a notice of assignment, dated 14 January 2022, Mr Dunn assigned the benefit of the notice to the applicants, who have purchased the Flat from Mr Dunn.

4. At the time of the notice Mr Dunn held the existing lease granted on 28 January 1985 for a term of 177 years commencing on 25 December 1898 and expiring on 24 December 2075 (“the Lease”). The annual ground rents are £100 per annum until 25 December 2014, £200 per annum until 24 December 2047, and £300 per annum thereafter.

5. The applicants proposed to pay a premium of £146,750 for the new lease.

6. On 17 March 2022, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £451,470 for the grant of a new lease.

### **The application**

7. In July 2022, the applicants applied to the Tribunal for a determination of the premium of the Flat.

8. Originally, there was a difference between the parties as to other proposed terms of the lease, but those matters have now been settled.

9. Directions were given on 17 October 2022.

### **The hearing**

10. The hearing in this matter took place in person on 31 January and 01 February 2023. The applicants were represented by Ms Robyn Cunningham of counsel. The respondent was represented by Ms Nichola Muir of counsel.

11. Neither party asked the Tribunal to inspect the Flat and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.

12. The applicants relied upon the expert report and valuation of Mr James Rangeley MRICS dated 19 January 2023. The respondent relied upon the expert report and valuation of Mr Robin Sharp FRICS dated January 2023.

### **Location and description**

13. The Flat is on the first floor of a six floor mansion block constructed in the early years of the last century. It is built around a courtyard and located at the junction of Emery Hill Street and Francis Street in Central London close to Victoria Station, Pimlico Underground Station and Westminster Cathedral. Ashley Gardens

contains a number of similar mansion blocks.

14. There is controlled street parking. There are also some 12 parking bays within the courtyard. There is a notice on the wall of the courtyard stating, "ASHLEY GARDENS FLATS 204 to 227 RESIDENTS' PARKING ONLY" The porter told Mr Sharp that most residents' cars can be accommodated. Strictly speaking, the Lease prohibits a right to park a car in courtyard (paragraph 8 third schedule). However, we have taken into account that there is de facto parking. Indeed, there is an argument that any existing de facto parking ripened into an easement on the grant of the Lease under s.62 Law of Property 1925.

15. The Flat has a bay window overlooking the courtyard. At the rear the windows face commercial offices. The ceilings are about 10ft 8ins high. The Flat has 3 bedrooms, a reception room with the bay window feature, a bathroom with a WC, a separate WC, cupboards, storage, kitchen and entrance hall.

16. The Lease does not include the separate WC. We find, on the balance of probabilities, that the separate WC was an improvement carried out by a lessee and was not part of demise. Accordingly, we ignore this in our valuation. The gross internal area is, according to a measured survey, 1,407 sq ft.

17. The development is portered, common parts are well presented and there is a lift.

### **Matters agreed between the experts**

18. From an agreed statement of facts and the experts' reports, the following matters were agreed by the time of the hearing:

- (1) The valuation date is 08 January 2022.
- (2) The unexpired term of the Lease at the valuation date was 53.96 years.
- (3) The unexpired term of the intermediate lease at the valuation date was 53.96 years plus one day.
- (4) The unexpired term of the competent landlord's lease at the valuation date was 875.94 years.
- (5) The ground rents are as set out above.
- (6) The capitalisation rates is 6.0%
- (7) The deferment rate is 5%.
- (8) The Flat is described as set out above.
- (9) The freehold value has a 1% uplift.
- (10) The premium payable to the intermediate landlord is £1.

### **The issues**

- (1) The value of the existing lease under the statutory assumptions.
- (2) The freehold vacant possession value.
- (3) Whether the assumed configuration should include the separate WC (we have already answered that above in favour of the applicant).
- (4) The premium.

**The comparables**

19. The parties were agreed that the most suitable comparables could all be found within Ashley Gardens itself.

20. Between them the expert witnesses relied upon the following 11 comparables:

43 Ashley Gardens
46 Ashley Gardens
100 Ashley Gardens
106A Ashley Gardens
107A Ashley Gardens
143B Ashley Gardens
145A Ashley Gardens
178A Ashley Gardens
182 Ashley Gardens
207 Ashley Gardens
211 Ashley Gardens

21. We consider the following identified sales as being the best comparables:

43 Ashley Gardens	£1,775,000
46 Ashley Gardens	£2,250,000
106A Ashley Gardens	£1,100,000
107A Ashley Gardens	£1,195,000
143B Ashley Gardens	£1,415,000
145A Ashley Gardens	£1,000,000
178A Ashley Gardens	£1,350,000
182 Ashley Gardens	£1,900,000

**Time adjustments**

22. We prefer to adjust each of the sale prices by the HMLR index rather than by the Savill's PCL index. This is not one of the best blocks preferred by overseas buyers and is part of the mix of more normal blocks in Central London.

23. The adjustment is as follows:

43 Ashley Gardens	
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46 Ashley Gardens	£2,775,773
106A Ashley Gardens	£1,187,074
107A Ashley Gardens	£1,363,363
143B Ashley Gardens	
145A Ashley Gardens	£1,080,241
178A Ashley Gardens	£1,493,063
182 Ashley Gardens	£2,343,986

### **Condition adjustments**

24. We accept the adjustments for condition given by Mr Sharp at electronic pages 193 to 197, save for one double counted parking allowance and a ceiling allowance. The adjusted figures per sq ft are therefore:

43 Ashley Gardens	£1,028
46 Ashley Gardens	£1,168
106A Ashley Gardens	£1,148
107A Ashley Gardens	£1,276
143B Ashley Gardens	£1,245
145A Ashley Gardens	£1,009
178A Ashley Gardens	£1,160
182 Ashley Gardens	£1,086

25. The mean average is £1,140 per sq ft. We deduct 10% because the second wc was installed by the tenant. As stated above the size of the flat is 1,407 sq ft. The freehold value is £1,443,582 and the long lease value of the Flat is £1,429,146.

### **Relativity**

26. Mr Rangeley deals with relativity in paragraphs 7.01 – 7.025 of his report (electronic pages 133 – 137).

27. He says that having reviewed a number of other cases with differing lease lengths and referring to his own experience in settling claims elsewhere, he considers that the appropriate discount for 1993 Act rights should be 5.5% - 5.75%. He adopts the higher discount of 5.75% which derives from an existing leasehold value without Act rights of £647 per sq ft. He adopts his pro rata freehold vacant possession figure of £860 per sq ft, which equates to a relativity of 75.23%.

28. He cross checks this figure with the graphs prepared by Gerald Eves and Savills. The average of Gerald Eves 1996 and 2016, and Savills 2016 is 74.93%. Using a blend of both approaches he settled on **75%**.

29. Mr Sharp deals with relativity in paragraphs 7.1 - 7.9 of his report (electronic pages 168 – 170).

30. He takes the average of Gerald Eves 2016 and Savills 2016 which is 73.81%.

31. In comparison, he adjusts the existing lease value to £1,000,000, by taking into account Savills value of Act rights (7.87%), the condition of the Flat and the fact that it was an executor's sale. This produces a relativity of 67.3%. He then takes an average of 73.81% and 67.3% which produces a figure of **70.56%**.

32. In our view the figure of **70.56%** is the more reliable one.

### **Conclusion**

33. We have stated the premium at the commencement of this decision. Our calculations are set out in appendix A attached.

**Name:** Judge Simon Brilliant

**Date:** 14 April 2023

### **Appendix:**

#### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Subject 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 subject 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).