



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

Case reference : **LON/00AC/OLR/2022/0673
(CVP REMOTE)**

Property : **7 Goodwyn Avenue London NW7
3RJ**

Applicant : **Richard Anthony Fitzgerald**

Representative : **Mr Eamonn Sonner FRICS**

Respondent : **Anthonia Gbolabo Williams**

Representative : **Mr Peter Morgan FRICS**

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

Tribunal members : **Judge Professor Robert M. Abbey
Anthony Harris LL.M FRICS,
FCI Arb, Valuer Chair**

**Date of determination
and venue** : **10 May 2023 by Video hearing**

Date of decision : **12 May 2023**

DECISION

Summary of the tribunal's decision

- (1) The premium payable for the newly extended lease is in the sum of £50,159 as more particularly set out in the valuation annexed to this decision.
- (2) the Tribunal approves the form of draft lease but with the exclusion of the disputed clauses inserted by the applicant.

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 newly extended lease of **7 Goodwyn Avenue London NW7 3RJ** (the “subject property”).
2. By a notice of a claim served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease of the subject property. The applicant subsequently proposed to pay a premium of £25,000 for the new lease.
3. The respondent freeholder served a counter-notice admitting the validity of the claim and subsequently counter-proposed a premium of £71,750 for the grant of a new lease.

The issues

4. Many aspects of the claim and valuation were agreed by the parties other than the matters listed below. The following matters have been agreed:
 1. Date of valuation 4 January 2022
 2. unexpired term 54.22 years
 3. capitalisation rate for the ground rent income 6%
 4. deferment rate for calculation of the value of landlord’s reversions 5%
 5. relativity 74.10%
 6. The flat is to be valued as a one-bedroom flat disregarding the existence of the single storey kitchen extension at the rear. The flat is valued with the benefit of a rear garden and there is a dispute between the parties as to whether there is a right to park at the front of the property.

Matter not agreed.

5. The following matters were not agreed:
 - (a) New lease terms and

(b) Premium payable

The hearing

6. The hearing in this matter took place on 10 May 2023. The applicant was represented by their Chartered Surveyor, Mr Eamonn Sonner and the respondent by their Chartered Surveyor, Mr Peter Morgan.
7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Hearing platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in one bundle of many pages, the contents of which we have recorded, and which were accessible by all the parties. Therefore, the tribunal had before it one electronic/digital trial bundle of documents prepared by the applicant and by the respondent, in accordance with previous directions. Valuation reports from both surveyors were the core element of the bundle.
8. Neither party asked the tribunal to inspect the subject property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
9. The applicant confirmed that the only reasons the dispute was before the Tribunal were because the parties could not agree on the basis for the valuation for the consideration to be paid for the newly extended lease and the new lease terms.

Mr Sonner's evidence

10. Mr Sonner describes the flat is a converted ground floor flat of traditional construction with a single-story extension to the rear with a felt flat roof. The rear garden is enclosed and on street parking is available with daytime restrictions. Accommodation is agreed as 1 bedroom, reception room, kitchen, bathroom and entrance hall. He measures the floor area at 56.77 m². The rear extension is to be disregarded for valuation purposes.
11. Mr Sonner adopts the definition of value set out in the international valuation standards taking into account the requirement of the Act and the terms of the existing lease. In particular the tenant will not erect any building on the garden and will use the garden as a garden only and will not convert the same to any use whatever.

Comparable evidence

12. 49a Goodwyn Avenue is a converted one-bedroom first-floor flat in average condition but with the benefit of off-street parking. The lease has 143 years unexpired. The property was placed on the market in May 2022 at £375,000 with the asking price reduced to £335,000 in October 2022. Mr Sonner gave evidence that he had spoken to the selling agent within the past few days who confirmed that the property was still under offer at £320,000 with a mortgage offer received and exchange expected shortly. Although this is not a completed transaction as it is a flat in the same street and currently firmly under offer the tribunal places considerable weight on this transaction.
13. 2b Langley Park NW7 is a one-bedroom apartment with 92 years unexpired on the lease and no car parking or garden. It is on the market at an asking price of £350,000. No sales particulars are exhibited, and no evidence was given of the length of time it has been on the market. The tribunal places little weight on this evidence.
14. Westmere Drive NW7 is a 1st floor one-bedroom flat with a re-fitted kitchen currently on the market at £325,000 with 123 years left unexpired on the lease. Again no sales particulars are exhibited and with no marketing history the tribunal places little weight on this comparable.
15. Hammers Lane NW7 is a 1st floor one-bedroom flat currently on the market at £325,000. There are 123 years left on the lease. Again there are no marketing particulars or marketing history and the tribunal places little weight on this evidence.
16. Additionally, several two-bedroom flats are included to illustrate the difference between one and two-bedroom flats.
17. Flat 2, 5 Millway NW7 is a two-bedroom flat which sold for £420,000 on 10 June 2022. Property had 111 years remaining on the lease and off-street parking. The flat is described as being in excellent condition.
18. 10 Millway NW7 is a two-bedroom ground floor flat described by the selling agents as being immaculately presented. It benefits from off-street parking and sold in April 2022 at £448,000.
19. Flat 2, 4 Lewy House 1 Langley Park NW7 is a converted 2-bedroom 2-bathroom apartment with parking. It is available at an asking price of £430,000 and previously sold in November 2018 for £395,000.
20. 6b Flower Lane NW7 a two-bedroom flat available for sale at an asking price of £400,000 photograph appears to show parking at the front of the property.
21. No sales particulars or marketing history of any of these 4 properties has been provided and as they are two-bedroom flats the tribunal does not find

them of direct relevance in valuing the subject property. They are of limited benefit as context in the market.

Mr Sonner's valuation

22. Mr Sonner places the greatest weight on the proposed sale of 49a Goodwyn Avenue at £320,000 being one-bedroom flat of similar style and in the same road. It is in similar condition.
23. Mr Sonner acknowledges that parking exists in the former front garden, but this is excluded specifically under the terms of the lease in paragraph 12 of the schedule. In his view therefore parking should be excluded in accordance with the terms of the lease. The landlord has other remedies if he chooses to use them, and a prospective hypothetical purchaser would do so with the benefit of a mortgage and ambiguities in the lease would be pointed out. The property would not be sold with the benefit of parking. For these reasons he adjusts the sale evidence of 49a Goodwyn Avenue by £20,000 to get to an adjusted value of £300,000. Using the Nationwide House Price Index, he considers that the value would have increased from the valuation date to the present day by 4.09%. However, he adopts the figure of £300,000 as the vacant possession value.
24. Mr Sonner considers that the tenant's improvements of replacement double glazed windows, new bathroom and heating system with a new fitted kitchen should be disregarded, and he assesses the value of these improvements at 5% or £15,000. The starting point for his valuation is £285,000 for the long leasehold interest.
25. In commenting on this valuation Mr Morgan reminded the tribunal that the valuation date was January 2022 which predates the significant rise in mortgage interest rates during the latter part of 2022 which has had an undoubted effect on the property market since then. This should be taken into account in considering current transactions.
26. In response to a question from the tribunal, Mr Sonner did not consider that the rear garden added any value as compared with a 1st floor flat.

Mr Morgan's evidence

27. Mr Morgan lists the accommodation of the property as a two-bedroom flat with the benefit of sole use of the patio and rear garden. The existence of the garden has enabled the leaseholder to build an extension housing the kitchen.
28. In relation to the rear extension, the statutory formula requires authorised tenant's improvements to be disregarded but he considers that the value of the right to make those improvements should be included. Given that the leaseholder has the use of the rear garden and is able to build an extension

that value needs to be included. The fact the freeholder has given permission to build the extension constitutes a variation to the terms of the lease which might otherwise have prevented it.

29. The extension has a floor area of 189 ft.² and valuing this at £800 per square foot comes to £151,200. The building cost at £200 per square foot is about £37,800 and allowing for fees and finance and the margin for time and trouble he considers that a total cost of £75,000 would be correct leaving about £75,000 for the land value or write to extend.
30. In considering the question of car parking, Mr Morgan wrongly states that the ground floor lease does not prohibit car parking in the front garden unlike the 1st floor flat lease which he exhibits. The tribunal pointed out to him that clause 12 of the schedule prohibits parking. In practice the freeholder of the ground floor flat is parking in the forecourt and the freeholder has never made any attempt to prevent him from doing so.

Comparable evidence

31. Mr Morgan relies on 6 comparables which he says were sold between January 2019 and July 2022 or having a floor area similar to the subject property of between 506 ft.² and 690 ft.²
32. 19a Goodwyn Avenue is the primary comparable on which Mr Morgan relies. He considers it is a smaller flat being on the upper floor with no opportunity to extend. Updating the selling price to the valuation date gives a price of £501,357. Applying the same rate per square foot to the subject property gives a value for the subject flat £596,582 plus the value of the right to extend taking the full value to £671,582.
33. Relying on one comparable is not good valuation practice so taking into account all his comparables he arrives at a value of £450,000 for the freehold interest. He then deducts £10,000 as the value of the improvements leaving £440,000 as the unimproved freehold value.
34. The statement of case on behalf of the leaseholders includes 2 comparable snapshots from Rightmove Plus relating to 19a Goodwyn Avenue. They show the flat as either having 1 bedroom or 2 bedrooms and a floor area of either 47 m² or 85 m². Mr Sonner considers that as Mr Morgan has no first-hand knowledge of this or any further information the evidence is unreliable.
35. 21 Goodwyn Avenue is a ground floor flat which is said to be similar to the subject property with an extension in the rear garden. The flat sold for £471,000 in May 2015 and updating this using land registry data gives a figure in January 2022 of £553,310. Mr Morgan acknowledges that it would normally be too long ago to be a useful comparable but is indicative of the value added by an extension. He considers it support his approach.

36.7 Hale Grove Gardens sold for £465,000 in May 2019. No other information is available.

37.15 Brockenhurst Gardens is a one-bedroom flat which sold in June 2021 4 £375,000. No further information is available.

38.15a Brockenhurst Gardens is a one-bedroom flat which sold for £385,000 in August 2021. No further particulars or details of be provided.

39.27 Millway is a two-bedroom ground floor flat sold for £370,000 in June 2020. No further particulars of been provided.

40.Flat B, 1 Millway sold in September 2021 for £448,000. No further details are given. Land registry titles have been provided for these properties confirming the selling price.

41. The tribunal's determination

42. The tribunal determines that the premium to be paid will be £50,159. Furthermore, the Tribunal approves the form of draft lease with the exclusion of the disputed clauses inserted by the applicant.

Reasons for the tribunal's determination

The valuation issue

43.As will be apparent from the list of items not agreed as set out above there was a significant difference in the valuations. In making the valuation we are considerably hampered by the lack of information relating to any of the comparables. There are no sales particulars, EPC reports or other valuation reports and neither valuer seems to have any knowledge of the comparables.

44.Bearing in mind the limited information available to it, the tribunal considers the most useful comparable is 49a Goodwyn Avenue which is a converted 1st floor flat with one-bedroom and having the benefit of parking but no garden. Applying that to the subject property, the tribunal considers that the lack of parking for the subject property is counterbalanced by the presence of the garden and therefore makes no adjustment for either of these factors. The tribunal accepts Mr Morgan's point that the market today is not the same as in January 2022 due to changes in mortgage conditions, but the evidence is inconclusive as to the amount by which the value may have changed. Any increase in the value of the property in the early part of 2022 will be offset by the decline in the market in the later part of the year. Relying on its knowledge and experience the tribunal therefore makes no adjustment.

45. The valuers discussed the question of improvements being the replacement of the heating system, replacement of windows with UPVC double glazing and alterations to the kitchen and bathroom. On balance the tribunal prefers the evidence Mr Morgan that the adjustment is £10,000 with the windows being the major improvement.
46. The tribunal places little weight on the evidence of properties on the market in the absence of any sales particulars or information relating to the marketing history. It also does not place any reliance on two-bedroom flats which are a different market.
47. Turning to the parking issue, the tribunal agrees with Mr Sonner that the lease prohibits car parking and while the freeholder has taken no enforcement action there is no right to which a value can be ascribed.
48. The statutory valuation formula requires the tribunal to disregard the value of the rear extension. Mr Morgan considers there is additional value to come from the right to carry out the works and relies in particular on the decision of the High Court in *Lewisham Investments Ltd v Morgan*, a commercial rent review case. As the court pointed out in that case, each lease turns on its own merits and the tribunal derives no assistance from a commercial rent review case dealing with the valuation of a residential unit under the statutory formula. Any such extension is likely to be built under permitted development rights so there is no planning permission to consider for this property as opposed to any other and in addition upper floor flat have the rights to extend into the roof space where this is possible. The tribunal therefore considers that the possibility of utilising permitted development rights is already reflected in values.
49. The tribunal values the leasehold interest at £310,000 with the freehold 1% higher.

The Tribunal's decision

50. The premium payable is **£50,159** as set out in the attached calculation.

The lease issue

51. The latest version of the lease extension deed was produced to the Tribunal at tab B page 45 of the Bundle. The point in dispute relates to insurance. The Tribunal was able to see in redline the changes suggested by the applicant/tenant and that they have been struck through as not agreed by the respondent/landlord.
52. The tenant considers that the current insurance clause should be modified and/or that it is defective because the landlord is only obliged to insure the building against "loss or damage by fire and aircraft". Further the applicant asserts that there is nothing at all in the lease

requiring the landlord to claim the insurance proceeds in the event of damage by a risk against which it has insured, let alone to lay out those insurance proceeds in remedying any damage caused. The applicant says that this is clearly an error in the drafting and or an unreasonable term that should be corrected.

53. Under s57(6)(b) of the Act the tenant is seeking to modify a term which is allowed where it shows that is reasonable to do so. In the alternative, the tenant submits that the lease should be amended under s57(6)(a) because it is defective.

The effect of statute

54. The broad principle is that “the new lease ... shall be a lease on the same terms as those of the existing lease”, as they apply on the date that the s42 Notice is given to the landlord (s.57(1)), see below for the wording of this section. *Gordon v Church Commissioners* (LRA/110/2006): "the starting point is firmly based in the terms of the existing lease" (at [34]).
55. Section 57 of the Leasehold Reform, Housing and Urban Development Act 1993 provides that: -

Terms on which new lease is to be granted.

(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms

56. Section 57(6) of the 1993 Act provides that: -

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

57. Accordingly, in order for a party to require the terms of the existing lease to be modified the party must satisfy the tribunal that either of the grounds in 57 (6) (a) or (b) are made out.

The Tribunal's decision

58. The tribunal carefully considered submission from both parties. The core of the dispute is about what the amendments sought by the applicant are trying to do.

59. The tribunal determines that what the applicant seeks to insert in the new lease is entirely new. There is no such covenant to modify because the insurance arrangements are already dealt with in the existing insurance provisions. The proposed clauses are entirely new to the lease. The tribunal has no jurisdiction pursuant to section 57(6) of the 1993 Act to require a new term in the format of the proposed insertions proposed by the applicant. In the case of *Gordon v Church Commissioners LRA/110/2006* it was made clear that wholly new terms cannot be inserted in the new lease under the terms of section 57(6) of the 1993 Act. The decision makes it plain that in the absence of agreement between the parties, statute will not include new terms under this section. Paragraph 41 of that decision confirms this clear interpretation of the section where Judge Huskinson writes "*In my judgment there is no power under section 57(6) for a party to require that there is added into the new lease a new provision which is not to be found in the old lease*". The tribunal noted that the case of *Gordon* was applied by the Leasehold Valuation Tribunal in *Cadogan v Chelsea Properties Limited (No 2)* (Unreported 2008).

60. The current lease is, in the Tribunal's view, not defective in that there is an existing mechanism to insure the property. To make changes would create anomalies with the lease of the other flat in the building. The legislation contemplates the correction of existing defects, statute talks about remedying a defect in the existing lease. However, there is no such existing defect in the existing lease, in that it does provide insurance provisions albeit not to the liking of the applicant, but that is not something the Tribunal can remedy.

61. Accordingly, the Tribunal approves the form of draft lease with the exclusion of the disputed clauses inserted by the applicant.

62. Rights of appeal are set out below.

Name: Judge Professor Robert.
M Abbey

Date: 12 May 2023

Appendix – The Tribunal Valuation

Address	7 Goodwyn Ave NW7						
Client							
Basic Information							
Valuation Date	04 January 2022						
Existing lease Expiry Date	25 March 2076						
Years unexpired	54.22						
Length of new lease	144.22						
Existing Ground Rent	£25.00						
Capitalisation Rate	6.00%						
Deferment Rate	5.00%						
Long lease Figure figure	£310,000						
F/H to Long lease change	99%						
Freehold Figure	£313,131						
Relativity Figure	74.10%						
No Act Lease Value	£232,030						
EXISTING FREEHOLD VALUE							
TERM VALUE							
	Rent	Years	Yield	Cap Rate	P/V	Multiplier	Term Value
Term 1	£25.00	54.22	6.00%	15.9591	1	15.9591	£398.98
REVERSION VALUE							
	Capital Value	Years to Reversion	Deferment Rate	P/V	Reversion Value		
	£313,131	54.22	0.05	0.0710	£22,225		
Existing freehold value							£22,624
FUTURE FREEHOLD VALUE							
	Capital Value	Years to Reversion	Deferment Rate	P/V			
	£313,131	144.22	0.05	0.0009	£275		
MARRIAGE VALUE CALCULATION							
Value of Freeholders Current Interest						£22,624	
Value of Leaseholders Current Interest						£232,030	£254,654
Value of Freeholders New Interest						£275	
Value of Leaseholders New Interest						£310,000	£310,275
						Difference	£55,621
						50% of Difference	£27,811
CALCULATION OF PAYMENT BY LEASEHOLDER							
Freeholders Current Value						£22,624	
less Freeholders New Value						-£275	
Share of Marriage Value						£27,811	
Premium payable							£50,159

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).