



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

Case reference : **LON/00AJ/OLR/2023/0174**

HMCTS code (paper, video, audio) : **CVP Video**

Property : **First Floor Maisonette, 95 Eastcote Lane, Northolt UB5 5RH**

Applicants : **John Carroll and Karen Carroll as Executors of the late Bernard John Holden Deceased**

Representative : **Mr Robert Hastie of Counsel instructed by Hetts Solicitors**

Respondent : **Englander Company Limited**

Representative : **Mr Simon Levinson MRICS**

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

Tribunal members : **Judge N Hawkes
Mr A Harris LL.M FRICS FCI Arb**

Date of hearing : **30 and 31 August 2023**

Date of decision : **18 September 2023**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP VIDEO HEARING REMOTE. The documents that the Tribunal was referred to are in a digital bundle of 310 pages. The order made is described below.

Summary of the Tribunal's decision

The premium payable for the new lease of the First Floor Maisonette, 95 Eastcote Lane, Northolt UB5 5RH is £125,143.

Background

1. This is an application made by the Applicants pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the premium to be paid for the grant of a new lease of the First Floor Maisonette, 95 Eastcote Lane, Northolt UB5 5RH ("the Property").
2. Chapter II of the 1993 Act confers on the tenant of a flat the right to acquire a new lease of the flat on the payment of a premium which is calculated in accordance with the provisions of Schedule 13 to the 1993 Act. The new lease, under which no rent is payable, is for a term equal to the unexpired term of the original lease plus an additional 90 years.

The issues

3. The following matters have been agreed:
 - i. The valuation date is 25 August 2022.
 - ii. The unexpired term of the under-lease at the valuation date is 24.76 years.
 - iii. There are no significant improvements.
 - iv. Marriage value applies.
 - v. The capitalisation rate is 6.5%.
 - vi. The deferment rate is 5%.
 - vii. The relativity of the existing leasehold interest is 44.61%
 - viii. Uplift to freehold is 1%.
 - ix. No "other compensation" is payable.
 - x. The terms of the proposed new lease have been agreed.

4. The only issue in dispute is the value of the freehold with vacant possession and therefore the premium. The Applicant contends for a premium of £123,950 and the Respondent contends for a premium of £135,779.

The hearing

5. The final hearing of this matter took place by CVP video on 30 and 31 August 2023. The Applicants were represented by Mr Hastie of Counsel at the hearing and they relied upon the expert evidence of Mr David Graham FRICS. The Respondent was represented by its expert, Mr Simon Levinson MRICS. Both experts had prepared written reports and gave oral evidence to the Tribunal.
6. No inspection was requested by either party. Colour photographs were provided in the hearing bundle and the Tribunal is satisfied that it is neither necessary nor proportionate to the issues in dispute for an inspection to be carried out.
7. At the commencement of the hearing, the Tribunal identified various breaches of the Directions on the part of both parties and considered whether to strike out the application or to bar the Respondent from taking any further part in these proceedings pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”). The breaches resulted in the trial bundle being served very late (without any extension of time having been granted or even applied for) and then being amended up to and including on the morning of the hearing. This caused considerable inconvenience to the Tribunal.
8. However, having considered and given effect to the overriding objective pursuant to rule 3 of the 2013 Rules, and having considered the nature and extent of the breaches as well as the fact that both parties were in breach, the Tribunal exercised its discretion to waive the defects pursuant to 8 of the 2013 rules on the facts of this particular case.

The Tribunal's determinations

9. As is helpfully set out in the Applicants' skeleton argument, the experts' reports (as amended after day one of the hearing) compare as follows:

	Mr Graham FRICS	Simon Levinson MRICS
Ground rent	£35.00	£35.00
DIV Head Lessee's	£370.00	£425.00
Virtual freehold value	£293,458.00	£322,000.00
Purchase value in 24.76 yrs	£87,680.00	£96,177.00
Purchase value in 114.76 yrs	£1,086.00	£1,191.00
DIV Freehold (rounded)	£86,963.00	£94,985.00
Value of R's interest	£1,075.00	£1,210.00
Value of A's interest	£290,552.00	£323,730.00
Less value of existing R	(£88,039.00)	(£96,177.00)
Less value of existing A	(£129,615.00)	(£142,208)
Marriage Value	£73,974.00	£81,587.00
50% to R	£36,987.00	£40,793.53
Total	£123,950.00	£135,779.00
Rounded	£123,950.00	£135,779.00

10. The Tribunal found the expert evidence of Mr Graham to be more credible than that of Mr Levinson.
11. Mr Levinson conceded in cross-examination that he was in error:
- i. In asserting that the 1993 Act required an assumption of fair habitable condition.
 - ii. In using a figure of £10,000 in his report for the modernisations, when the figure should have been £12,000 inclusive of VAT.

- iii. In saying that the indexation was to the sale date and to the valuation date in relation to the same comparables.
 - iv. In index linking one of the comparable properties, 33 Millway Gardens, to the date of valuation rather than the date of sale.
 - v. In not reading the HMLR Official Copies for 21 Millway Gardens and identifying a sale in August 2022 at £250,000.
12. Further, Mr Levinson relied upon four approaches to valuation when it was not necessary to do so and then averaged the resulting figures. Notwithstanding that five first floor maisonettes which are similar to the subject property sold in the vicinity of the subject property within a year of the valuation date, Mr Levinson sought to rely upon sales evidence concerning other dissimilar properties (see below). This had the effect of increasing the proposed premium.
13. Mr Graham relies on the following sales evidence (properties common to both reports are in **bold**):

Property	Date	Price	Adjusted value
95 Eastcote	-	-	
17 Millway	17/8/21	£310k	£292,812
109 Eastcote	10/2/23	£320k	£305,545
33 Millway	11/2/22	£290k	£273,884
119 Eastcote	25/3/22	£306k	£290,057

14. Mr Levinson relies upon the following sales evidence (properties common to both reports are in **bold**):

Property	Floor	Sq. Mtrs	Condition	Date	Price	Adjusted value
95 Eastcote	1 st	54	Unimproved	-	-	
109 Eastcote	1st	51	Basic refurb	Feb 23	£320k	£319,526
1 Newbury	Grd	65	Good	28 Feb-23 {42}	£380k	£363,187
21 Millway	1 st	51	BTL regrab (sic)	Mar 23 but no paper evidence of sale	£340k - (HMLR says £250k {53} in August 2022)	£326,124
119 Eastcote	1st	53	Tired	25/3/22	£306k	£316,331
33 Millway	1st	53	Dated {68}	Mar-22	£290k	£310,830
6 Newbury way	Grd	69	Tired {81} but new boiler {82}	24 May 22	£340k	£359,415
11 Newbury way	Grd	68	Good {97}	Apr 22	£365k	¹ £369,193

15. The Tribunal finds the comparables in Eastcote Lane and Millway Gardens to be of the greatest relevance. The properties in Newbury Close are significantly larger and much further away from the subject Property. The Tribunal places no weight on these comparables as there is much better sales evidence concerning directly comparable properties.

¹ Indexed to sale date. Includes £9,493 for lease length 90 year term remaining.

16. The Tribunal has placed significant weight on the following transactions:
 - i. 17 Millway Gardens is an identical flat to the subject Property. It is held on a lease with a term of in excess of 900 years and is described as being in stunning condition and with use of a private garden. This property sold on 17 August 2021 for £310,000.
 - ii. 33 Millway Gardens is another flat identical to the subject Property which is held on lease with a term of in excess of 900 years. Again, it is described as being in better condition than the subject Property. This property sold in February 2022 for £290,000.
 - iii. 119 Eastcote Lane is described as being a fully modernised two-bedroom first floor maisonette in the same development as the subject Property but, again, in better condition. The lease has 103 years to run and this property sold for £306,000 in March 2022.
 - iv. 109 Eastcote Lane is another similar property with the owners having a share of the freehold. The sale of this property was registered on 15 February 2023 with a purchase price of £320,000.
17. 21 Millway Gardens is a property which was described as being in poor condition and a set of sales particulars was produced inviting cash offers only at £250,000. HMLR Official Copies record a sale on 17 August 2022 at £250,000. Mr Levinson gave evidence based on a Rightmove report that the property has subsequently been sold at £340,000 but he did not produce any evidence that such a sale has been registered. No internal photographs were produced and so the Tribunal was unable to judge the condition of this property. The Tribunal notes the sale at £250,000 but, due to the limited nature of the information provided, the Tribunal places no weight on this transaction.
18. The Tribunal agrees with Mr Graham that the proper approach to indexation is to index to the date of the sale rather than to the date of acceptance of an offer as initially proposed by Mr Levinson. Up until the date of sale there is no transaction, the house price index is based on sales, and like should be compared with like.
19. Both parties relied upon the house price index produced by HMLR for flats and maisonettes in Ealing. This index has also been used by the Tribunal to adjust the sales prices of the relevant comparable properties to the valuation date.
20. 119 Eastcote is let on a 100 year lease and a dispute arose between the experts concerning whether an adjustment is required on account of this lease being shorter than the leases of other comparable properties.

As stated above, the parties have already agreed that the adjustment from long leasehold to freehold is 1%.

21. Mr Graham does not make any further adjustment on account of the 100 year lease. However, Mr Levinson is of the opinion that an adjustment of 2% should be made and he cites authorities relating to central London. We are not satisfied that the same considerations apply in Northolt and we note that Mr Levinson accepted that adjustments are more common for leases shorter than 90 years in the context of mortgage valuations.
22. The RICS guidance on Valuation of Residential Properties for Secured Lending Purposes provides: *“Where remaining lease terms are longer than 100 years, very little impact is assumed compared to a long lease, although this will depend on the terms of the lease and the nature of the particular market where the property is situated.”*
23. In all the circumstances, we find that the 2% adjustment proposed by Mr Levinson is not necessary.
24. As regards improvements, Mr Graham has applied a blanket £25,000 adjustment to each comparable, regardless of its actual condition, which the Tribunal considers to be too blunt an approach. The Tribunal notes that the subject Property is in dated condition and requires a new kitchen and bathroom and complete redecoration, and that the condition of the central heating system is unclear.
25. The Tribunal is not satisfied that it is appropriate to apply percentage adjustments on the facts of this case. It is clear from the comparable sales evidence that values vary according to the condition of the properties and the Tribunal has considered each comparable property on a case by case basis.
26. Having carefully considered the expert evidence and supporting documents and applying its general knowledge and experience as an expert Tribunal, the comparable properties which the Tribunal finds to be relevant and the adjustments which the Tribunal finds to be appropriate are set out below:

address	lease	date	price	adjusted value for date	less Condition adjustment	
95 Eastcote Lane	90 yrs wef 15/7/1957	25/08/2022				
17 Millway Gdns p155	900 yr +	17/08/2021	£ 310,000	£ 316,000	£ 20,000	£ 296,000
33 Millway Gdns p162	900+ lease	11/02/2022	£ 290,000	£ 297,000	£ 15,000	£ 282,000
119 Eastcote Lane p227	103 yrs	Mar-22	£ 306,000	£ 315,000	£ 20,000	£ 295,000
109 Eastcote Lane P143 and p200	sh of F/H	10/02/2023 registered 15/2/23	£ 320,000	£ 315,000	£ 15,000	£ 300,000

27. Applying these findings, the long leasehold value of the subject Property on the valuation date is £295,000 and the freehold value is £297,980 applying the agreed 1% adjustment. The remaining valuation variables are agreed.

Conclusion

28. The premium payable for the new lease of First Floor Maisonette, 95 Eastcote Lane, Northolt UB5 5RH is £125,143. The Tribunal's valuation is attached to this decision.

Name: Judge N Hawkes **Date:** 18 September 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).

The Tribunal's valuation

Address	95 Eastcote Lane						
Basic Information							
Valuation Date	25 August 2022						
Existing lease Expiry Date	31 May 2047						
Years unexpired	24.76						
Length of new lease	114.76						
Existing Ground Rent	£25.00						
Capitalisation Rate	6.50%						
Deferment Rate	5.00%						
Long lease Figure	£295,000						
F/H to Long lease change	99%						
Freehold Figure	£297,980						
Relativity Figure	44.61%						
No Act Lease Value	£132,929						
EXISTING FREEHOLD VALUE							
TERM VALUE							
	Rent	Years	Yield	Cap Rate	P/V	Multiplier	Term Value
Unexpired term	£25.00	24.76	6.50%	12.1501	1	12.1501	£303.75
REVERSION VALUE							
	Capital Value	Years to Reversion	Deferment Rate	P/V	Reversion Value		
	£297,980	24.76	0.05	0.2987	£89,014		
EXISTING FREEHOLD VALUE							£89,318
FREEHOLD VALUE AFTER EXTENSION							
	Capital Value	Years to Reversion	Deferment Rate	P/V	Reversion Value		
	£297,980	114.76	0.05	0.0037	£1,103		
MARRIAGE VALUE CALCULATION							
Value of Freeholders New Interest							£1,103
Value of Leaseholders New Interest							<u>£295,000</u>
							£296,103
LESS							
Value of Freeholders Current Interest							£89,318
Value of Leaseholders Current Interest							<u>£132,929</u>
							<u>£222,246</u>
	Difference						£73,856
SHARE OF MARRIAGE VALUE					50% of Difference		£36,928
CALCULATION OF PAYMENT BY LEASEHOLDER							
Freeholders Current Value							£89,318
less Freeholders New Value							-£1,103
Share of Marriage Value							£36,928
Premium payable							£125,143