



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

- Case Reference** : **MAN/30UK/OLR/2022/0018-21**
- Property** : **Flats 19, 22, 24 and 26 Greenfield Way, Ingol,
Preston PR2 3DG**
- Applicant** : **Mr K Henry and Bridgemane Investments
Limited**
- Respondents** : **Fairbar Limited**
- Type of
Application** : **Application for lease extension: Section 48(1)
Leasehold reform and Urban Development
Act 1993**
- Tribunal Members** : **Mr J R Rimmer
Mr I James**
- Date of Decision** : **5th May 2023**
- Decision** : **(1) The terms of the new lease are those
determined at paragraphs 11-14, herein,**
- (2) The premium payable to the Respondent in
respect of each flat is: £686.00 and the
diminution in the value of the head lessor's
interest in respect of each flat is £752.00**
- (3) The reasonable costs of the Respondent are
those set out in paragraph 23 herein (legal
costs) and paragraph 24 (surveyors' costs)**

Preliminary

- 1 This application concerns 4 flats, being 4 of a total of 8 flats which together comprise a two-storey apartment block situated on Greenfield Way in the Ingol district of Preston. The Tribunal had the advantage of inspecting one of the flats on the morning of 27th April 2023, prior to the commencement of a paper determination of these matters later the same day.
- 2 Within the building there are 4 downstairs flats and a further four on the first floor. They appear to comprise a basically similar layout, within a standard floor plan, so as to encompass a living area, sleeping area, kitchen area and bathroom. There is a common entrance to the building, hallway, stairway and landing together with a small communal external area to the side. It appears that each downstairs flat has entitlement to and responsibility for the external grounds outside each flat, whilst the upstairs flats have responsibility for the attic and roof areas.
- 3 They are situated within a short distance of limited local amenities, with more substantial facilities further away, either in Preston City Centre, accessible by local omnibus services, or nearby local commercial areas.
- 4 There are two Applicants: Mr Henry now holds the various sub-leases to 3 flats (19, 22 and 24) whilst Bridgemane Investments Limited, a company he controls, holds the 4th sub-lease to number 20. All the sub-leases are granted for a period of 120 years from 25th December 1981 and the applicants now seek 90-year extensions to those sub-leases under the provisions of Section 48(1) leasehold Reform and Urban Development Act 1993 (“The Act”). The notices in respect of each flat given by the Applicant are dated 12th August 2021 which fixes that date as the relevant date for effecting valuations required by the provisions of the Act.
- 5 These subleases were all granted at an annual rental of subject to review at 21-year intervals. The initial rent was £20.00 per annum, which rose to £26.00 when the first review eventually took place, save in relation to no.26, where the review remains outstanding. A further review is due on 25th December 2023.
- 6 Following the granting of the sub-leases, which vary slightly in the dates of their creation, depending on when original sales took place, between 15th March 1982 and 2nd April 1982 an intervening headlease for a period of 120 years less one day from 25th December 1981 was granted to Proxima GR Limited with effect from 17th May 1982 at a rent of £1.00 per year. During the subsistence of this lease the leases of the individual flats are sub-leases of this lease.
- 7 There had been very little effort made by the parties to agree anything beyond the fact that the notices seeking the extended leases were accepted by the Respondent as entitling the Applicants to the same but disagreeing as to the terms thereof, the value of the diminution in the interests of the Respondent and

the head lessee and the appropriate costs to be paid by the Applicant, leaving the Tribunal to:

- (1) Determine the terms of the new leases.
- (2) Value the premiums payable to the Respondent and the head lessee at the valuation date, upon which no agreement had been reached between the parties.
- (3) Determine the reasonable costs of the Respondent which were being claimed in an amount of £995.00.00 for legal costs in respect of each lease/flat and an amount of £960.00 for surveyor's fees for a single valuation encompassing all 4 flats.

8 The Tribunal must express some disappointment at the lack of effort by the parties to at least seek to narrow the differences between them. It is not for the Tribunal to settle an entire lease and it does not intend to do so at this stage. It directs the parties' attention to the requirements of the legislation and the terms of the existing leases, subject to the observations set out herein.

Evidence and submissions

9 The Tribunal was presented with a limited number of documents by the parties, but which nevertheless represented their current positions in relation to the matters to be determined.

The terms of the new lease

10 The issue is this: Proxima GR Properties Limited play no active role in the management and occupancy of the flats. There is a right to manage company inserted to effect management of the building. The dispute is as to whether either, both, or neither, of those two entities are parties to the lease. If there is no agreement upon the matter, it is for the Tribunal to make a determination.

11 It is accepted by Proxima GR Properties Limited that they have no part to play in the current management of the flats. It appears to the Tribunal that the right to manage company need not be a party to the lease. It is a creation of statute sitting outside the landlord and tenant relationship to exercise management functions where required. It is not the case that it needs to be a party for the essential operation of the lease between the landlord and tenant, or for the successful management of the building.

12 In such a situation Section 57(1) of The Act provides assistance:

- (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 (subject to exceptions that have no application in this case)

- 13 The existing leases of the flats were created prior to the insertion of the head lease in favour of Proxima GR Limited shortly after their creation and remains in place subject to the deprivation of income for which the head lessee is compensated by these proceedings.

The valuation of the interests of the Respondent and the head lessee.

- 14 Two valuations of those interests have been provided. That on behalf of the Applicant is derived from a valuation exercise by Miller Metcalfe, Surveyors from June 2017, whence is derived a valuation of the lessors interest if £381.00 and for the intermediate lessee’s interest an amount of £392.00. On behalf of the Respondent a desk-top valuation from Strettons Limited dated 3rd August 2022 provides amounts for those interests of £995.00 and £1,450.00 respectively. The author of the valuation indicates that his instructions are derived from the Intermediate lessee.
- 15 The parties will be familiar with the principles upon which such valuations are founded and the extent to which the valuation parameters affect the outcome of the respective valuations. Both parties adopt a widely accepted format to set those parameters. The Tribunal sets out below the manner in which it has evaluated the data inputted by the respective experts and how it has come to the conclusions that it has ultimately drawn from the information provided and its own views as an expert Tribunal.
- 16 Certain matters are agreed, or self-evident. Others are the subject of dispute and are set out, together with the final determination of the Tribunal, for which reasons are subsequently provided.

Agreed:

Valuation date	12 th August 2021
Lease expiry date	25 th December 2101
Unexpired term	80.37 years
Current ground rent	£26.00 per annum (£20.00 for no.26)
Next review date	25 th December 2023

Although the Tribunal notes that the Miller, Metcalfe valuation for the Applicant refers only to rents of £20.00.

Disputed:

	Applicant	Respondent
Capitalisation rate	5%	6%+2.25%
Deferment rate	5.75%	5%
Capital value	4x £35,000	2x £37,500.00 2x £40,000.00
Rent after 25.12.2023 review	-	£53.63

That data, when entered into the calculations provided by the parties in the manner set out in their respective submissions produces the valuations:

Intermediate leaseholder loss: Applicant £392.00 Respondent £780.00
Valuation of freehold interest: Applicant £391.00 Respondent £830.00

- 17 In the absence of any agreement between the parties it is for the Tribunal to weigh in the balance the evidence submitted by the parties and use its own knowledge and experience as an expert tribunal to determine those variable elements to assist the appropriate calculation of the interests in question.
- 18 It has some concerns in relation to the evidence submitted within the Miller, Metcalfe valuation in that it appears to take no account of either the rent reviews which were due in 2002 and would be due again in 2023. The Tribunal is aware that two exercises were taking place in 2017, there being a parallel rent review exercise being undertaken by Wilson & Co in relation to the earlier rent review. Hindsight suggests a broader examination should have been introduced to take account of the 2002 review and hence the likelihood of a 2023 review. The Miller, Metcalfe report is also dated in that it precedes by some time the notices seeking new tenancies in 2021. The Tribunal is of the view that this is particularly relevant given the effect of the Covid pandemic which was still creating market volatility at the time of the notices.
- 19 The Tribunal has therefore adopted the following relevant parameters, broadly adopting the methodology of the Respondent's valuer, but using what it considers to be preferred values, properly justified.

Capitalisation rate	6%	The Tribunal being of the view that 5% is too low and that the additional 2.25% suggested by the Respondent's valuer is sufficiently accounted for within the 6%.
Deferment rate	5%	The Tribunal is of the view that in the absence of clear evidence to support divergence from the "Sportelli" guidance the relevant rate is 5% in respect of flats.
Capital value of flats	£35,000.00 x4	The Tribunal has not simply sought to adopt a position between the two parties. It takes the view that at a valuation date occurring when it does the amount of £35,000.00 reflects the value of each flat at the time and having regard to the sales of flat nos 20,18,and 17, the dates thereof and the prices obtained,

together with the sale of a larger flat at 76, Golf View. Given the situation of the subject flats and the layout of the grounds, the Tribunal does not feel any differentiation between those with a small garden and those without is justified.

Rent after 25.12.2023 £48.44

Based on the formula provided within the lease that the rent is at the review the same proportion of the capital value of the lease as existed at the time of its creation i.e a multiplier of 0.000346021.

- 20 If those values are inserted into the appropriate calculation the amounts determined in respect of each flat will be as follows:

Head lessor value: 2.37 years purchase £26.00 @ 6%	£56.00
79.00 years purchase £48.44 @ 6%	£799.00
PV of £1 in 2.37 years x 0.8710	<u>£695.93</u>
	£751.93

Freehold reversion:	£35,000.00		
PV of £1 in 80.37 yrs x 0.0198		£693.00	
Freehold reversion after ext.	£35,000.00		
PV of £1 in 170.37 yrs x 0.0002		£ 7.00	£686.00

- 21 The Tribunal has not considered it appropriate, given the insignificant amount involved, to effect a separate valuation of the interest of the intermediate lessee in Flat 24 where there has been no rent increase since the lease was created.

The costs of the Respondent

- 22 The Respondent has provided a breakdown of the manner in which it has assessed the legal costs on an individual basis in respect of each of the 4 transactions. The Applicant does not accept that basis, particularly taking into account that the transactions taking place, with or without the assistance of the Tribunal, relate to 4 substantially identical leases (see the original leases in the bundles) of 4 substantially identical properties in one building sharing common facilities.
- 23 The Tribunal would have no difficulty in considering the costs in respect of any one of those transactions, taken singly, as being reasonable in the circumstances. It is however concerned that similar costs need not be incurred in respect of the remaining 3 transactions. The Tribunal does, however, take the view that

sufficient care and attention needs to be paid to ensure a sufficiency of overlap and that there is never simply an assumption to be made that all transactions are identical. In such circumstances if £895.00 + VAT is an appropriate amount for a single transaction, then £447.50 + VAT is appropriate for each of the other 3.

- 24 So far as surveyors' fees are concerned, they only appear late in the proceedings following Strettons' valuations. The evidenced invoice is in an amount of £800.00 + VAT is, in the opinion of the Tribunal reasonable for the valuation exercise that has been undertaken.

J R RIMMER
Tribunal Judge
5th May 2023

