



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

**Case reference** : **LON/00AM/2024/0302**

**Property** : **First Floor Flat, 6 Downs Road, London  
E5 8DD**

**Applicants** : **Annette Kennerley & Rosemary  
Titmarsh**

**Representative** : **Mr Carl Fain, counsel**

**Respondent** : **Chamber Estates Limited**

**Representative** : **Ms Nicola Muir, counsel**

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

**Tribunal members** : **Judge Tagliavini  
Mrs S Phillips MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **12 November 2024**  
**Date of decision** : **9 January 2025**

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**DECISION**

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## **The tribunal's decisions**

1. The capitalisation rate to be applied is 8.5%.
  2. The premium payable for the new lease is **£36,750,00**
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## **The application**

2. 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 new lease of **First Floor Flat, 6 Downs Road, London E5 8DD** (“the property”).

## **Background**

3. By a Notice of a Claim dated 11 December 2023 served pursuant to section 42 of the Act, the applicants exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicants held the existing extended lease dated 8 September 2015 for a term of 120 years from 25 March 2015 at a ground rent of £450 per annum doubling every 10 years. The applicants proposed to pay a premium of £11,500 for the new lease.
4. It was not disputed that the existing extended lease had been entered into voluntarily by the parties with the applicants acting through a solicitor and a premium paid of £17,000. Under the terms of this new agreed lease the ground rent is:

*£450 per annum during the first 10 years of the New Term hereby granted and the annual rent during every successive 10 year period of the New Term will be twice that which it was in the previous 10 year period.*

5. Ground rent payable during the term of the lease was calculated to generate the following amounts:

1st Period:	£450	06-Dec-2023	25-Mar-2025
2nd Period:	£900	25-Mar-2025	25-Mar-2035
3rd Period:	£1,800	25-Mar-2035	25-Mar-2045
4th Period:	£3,600	25-Mar-2045	25-Mar-2055
5th Period:	£7,200	25-Mar-2055	25-Mar-2065
6th Period:	£14,400	25-Mar-2065	25-Mar-2075
7th Period:	£28,800	25-Mar-2075	25-Mar-2085
8th Period:	£57,600	25-Mar-2085	25-Mar-2095
9th Period:	£115,200	25-Mar-2095	25-Mar-2105

10th Period: £230,400    25-Mar-2105 25-Mar-2115  
11th Period: £460,800    25-Mar-2115 25-Mar-2125  
12th Period: £921,600

6. On 8 February 2024 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £90,00 for the grant of a new lease.
7. In an application dated 8 April 2024 the applicant applied to the tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

8. The following matters were agreed:
  - (a) The subject property is a self-contained flat on the first floor of a building comprising four flats;
  - (b) The gross internal floor area is 41.84 square metres, which equates to 450 square feet;
  - (c) The valuation date: 11 December 2023;
  - (d) Unexpired term: 111.28;
  - (e) Ground rent; £450.00 per annum doubling every 10 years;
  - (f) Next rent review: 25 March 2025 (1.29 years from relevant date);
  - (g) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value; £425,000;
  - (h) Deferment rate: 5%.

#### **Matters not agreed**

9. The following matters were not agreed:
  - (a) The capitalisation rate.
  - (a) The premium payable.
10. Consequently, the current claim effectively seeks to 'buy out' the ground rent as it is calculated it will rise in accordance with the term as set out under paragraph 5.

### **The hearing**

11. The hearing in this matter took place on 12 November 2024 by remote video hearing. The applicants were represented by Mr Carl Fain of counsel and the respondent by Ms Nicola Muir of counsel.

12. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
13. The applicant relied upon the expert report and valuation of Mr Robert S Kaye MSc BA (Hons) MRICS dated 22 October 2024 who relied on alternative capitalisation rates of (i) 15.9% with 'no adjustment for Act rights' which produced a premium of £8,983.00 or (ii) 11.5% 'adjusted 'Act rights' which produced a premium of £15,991.00.
14. The respondent relied upon the expert report and valuation of Mr Colin Horton AssocRICS dated 7 November 2024 who applied a capitalisation rate of 6% and produced a premium of £97,322.89.
15. The central issue in dispute between the parties was the calculation of the capitalisation rate the calculation of which would lead to the determination of the premium payable by the applicants.

### **The applicant's case**

17. In his oral and written evidence Mr Kaye told the tribunal that he had defined the capitalisation rate as:

***Capitalisation Rate or Cap Rate (CR)*** – the yield applied to capitalise the rental income. It can be either explicit or implicit of future rental growth.

***Explicit Cap Rate (ECR)*** – where the CR is applied to each known increase in the rental income and is therefore explicit of rental growth (and the timing of the growth) and will be stated as ECR. ECR is also known as an equated yield or discount rate.

***Implicit Cap Rate (ICR)*** – where the CR is applied to the current rent (and sometimes the rent at the next rent review, increased by inflation to the date of valuation). The ICR is low to reflect the benefit of the future rental growth. Valuing using a GIY, where there is rental growth, is an example of an ICR.

18. Mr Kaye told the tribunal that in his report he had considered *Nicholson v Goff* [LRA/29/2006 (2007)] which sets out the factors relevant in assessing capitalisation rates i.e:
  1. The length of the lease term
  2. The security of recovery (i.e. risk of not receiving the full rent over the course of the lease term)

3. The size of the ground rent (a larger ground rent being more attractive)
  4. Whether there was provision for review of the ground rent
  5. If there were such a review, the nature of it.
19. Mr Kaye told the tribunal that *Nicholson v Goff* considers a generic capitalisation rate which in that case related to a ground rent which was £50 per annum fixed. In the current application he believed the correct method in the current application by which to value the ground rent income, is to analyse comparable investment transactions of other investments with 10 year doubling ground rent increases. These comparable transactions should be analysed so that the ECR can be calculated.
20. Mr Kaye told the tribunal that he taken into account 5 comparable properties that he was aware of and applied an average of ECR of 12.85%. He also referred the tribunal to a number of First Tier Tribunal decisions which included 18 Farringdon Court and Parking Space, Erleigh Road, Reading RG1 5NT *Ref:* CAM/00MC/OLR/2019/0020 and Flat 3, 8 Parkhill, Carshalton SM5 3RU *Ref:* LON/00BF/OLR/0904 and as well as Settlements where he had acted on behalf of one of the parties.
21. Mr Kaye referred to the ongoing government consultation on The Leasehold and Freehold Reform Bill. If passed in its current form, it would include a mechanism to cap the ground rent in the lease extension premium calculation at 0.1% of the value of the flat. In this case the value of the flat is £425,000 so the maximum rent in the lease extension calculation would be £425 per annum. Adopting a capitalisation rate of 6%, which is very much a freeholder friendly capitalisation rate for a non-onerous ground rent, it would return a SLE premium of £9,000. This mechanism is contained in the Leasehold and Freehold Reform Act 2024.
22. Mr Kaye concluded his report and his evidence to the tribunal by maintaining that as of the date of valuation, the Leasehold and Freehold Reform Bill was having its second reading in Parliament and contained a mechanism to cap the ground rent for the calculation of the premium payable at 0.1% of the value of the Flat. Further, there was a consultation to cap ground rents in existing leases.
23. In this case, that would result in a lease extension premium of £9,000 based on a 6% capitalisation rate. Mr Kaye does not consider a hypothetical investor would pay over this amount. Mr Kaye therefore valued the premium for the Statutory Lease Extension at £8,983 reflecting an ECR of 15.9%. This level of ECR is reasonable when

considered against the comparable evidence of a 10 year doubling ground rents which averages 12.85%, especially considering the evidence transacted before the issue of onerous ground rents were identified by the market and during a period of lower interest rates.

24. If the tribunal find that an adjustment for Act Rights is required, Mr Kaye was of the opinion that the premium for the SLE is £15,991 reflecting an ECR of 11.5%. If no Act Rights adjustment is necessary the ECR should still reflect the bad publicity, conflict and political pressure that come with this type of ground rent investment. An ECR of 11.5% is supported by recent FTT cases for less onerous and non-onerous rents with a far greater Security of Recovery, such as Farringdon Court at 8.5% and the evidence of 25 year doubling rents in the recent Parkhill case at 8.82%. Mr Kaye concluded that significantly higher ECR should be adopted for a 10 year doubling ground rent.

### **The respondent's case**

25. In his oral and written evidence Mr Horton relied on a number of previous First Tier Tribunal decisions as well as *Nicholson v Goff* to substantiate his view that the appropriate capitalisation rate to be applied in this application is 6%.
26. In *Ref: LON/BB/OCE/2015/0180 & /0255 & /0277* the core issue was the interpretation of the ground rent clause in the leases for two flats, which affected the enfranchisement premium the leaseholders needed to pay to acquire the freehold. The lease specified an annual ground rent of £250 for the first ten years, with a provision to double it every ten years. The applicants argued that this rent only applied to the first ten years, after which no further payments were due, while the landlord contended it would double every decade for the entire 99-year lease term.
27. The tribunal interpreted the lease to mean that the rent should double each decade, following contract interpretation principles to preserve the intended function of the rent review clause. The tribunal accepted the landlord's interpretation, which led to significant future ground rent values reaching up to £128,000 per annum by the lease's final decade. This interpretation greatly impacted the enfranchisement premium, as the future income stream from the ground rent increased the property's value for the landlord.
28. In *South Downs Road Ref: LON/00AM/OLR/2024/0302* the tribunal favoured the landlord's proposed capitalisation rate of 6%, deemed more appropriate given the secure nature of the ground rent income, and supported by prior case law *Nicholson v Goff*. This rate, combined with the doubling ground rent schedule, resulted in an enfranchisement premium of £116,047.

29. Mr Horton also drew the tribunal's attention to the considerations of the Lands Tribunal in *Nicholson v Goff* that influenced the determination of the capitalisation rate. There a 6% capitalisation rate was determined which has been influential in later applications when seeking the appropriate capitalisation rate to apply.
30. Mr Horton also had regard to the recent legislative changes under the Leasehold Reform (Ground Rent) Act 2022, where a 5% rate could reasonably be considered, particularly given the finite nature of the asset and high security of income recovery. A finite asset with a structured income flow and reliable enforcement provisions would support a lower capitalisation rate, reflecting the asset's inherent value and stability. He stated that it is unlikely there will ever be 10 year doubling ground rents again and the opportunity for an investor to come in and purchase this asset with the real and clear opportunity of not only getting a substantial income throughout the term but also potentially benefiting from forfeiture should the ground rent become too onerous. Mr Horton regarded the subject lease's forfeiture clause mitigates the default risk by allowing for repossession if debts exceed £350, thereby ensuring strong rent recoverability. He stated that this high degree of security, combined with the long lease term and reliable ground rent income, would typically favour a rate as low as 5%, maximising the asset's value to reflect its secure nature.
31. Mr Horton stated that in his opinion the Leasehold Reform (Ground Rent) Act 2022 limits ground rents on most new leases to zero, has shifted market perspectives on ground rent obligations. This change influences the valuation of properties with escalating ground rents, affecting both marketability and future rent recoverability as ground rents are increasingly scrutinised or removed. Therefore, in light of these new legislative conditions, applying a 6% rate in the context of this application, provides an appropriate adjustment to reflect potential future market impacts, consistent with trends observed in similar tribunal cases post-Act and relevant at the valuation date.
32. Mr Horton concluded his evidence by saying that in his opinion, the 6% capitalisation rate selected in this valuation balances the asset's high security and structured income flow with evolving market influences under the 2022 Act. While a 5% rate could traditionally reflect the strength and finite nature of the asset, the 6% rate aligns with current tribunal standards and market trends, capturing the reliable yet increasingly regulated nature of ground rent income. This approach offers a balanced, contextually relevant valuation.

### **The tribunal's determination**

33. The tribunal determines that the capitalisation rate to be applied to this valuation should be 8.5%. Whilst the tribunal sees merits in both the

applicants' and the respondent's arguments, neither have persuaded the tribunal to agree in totality with either valuation.

34. Although The Leasehold and Freehold Reform Bill has not yet become law or been enacted, there appears to be a clear indication of the that this area of law will significantly change in the future. However, neither the tribunal nor the parties know when this will happen although the tribunal considers this is a relevant factor that should therefore be included as a risk when assessing the appropriate the capitalisation rate to apply. However, the tribunal avoids placing too heavily a reliance on it in its decision.
35. The tribunal took into account all the market evidence provided by the parties and considers that a starting rate of 6% is appropriate with an increase of 2.5% to reflect the likelihood of future legislative change to be reflected in the capitalisation rate.
36. Having applied this to the appropriate calculations, this results in a premium of £36,750.

#### **Reasons for the tribunal's determination**

37. The tribunal has arrived at the premium after considering the matters as raised by the applicants and the respondent. On balance the tribunal preferred the approach taken by the respondent to that of the applicant, as it found the latter to be somewhat unclear with no, or no adequate explanation provided as to how some of the key figures relied upon by Mr Kaye were calculated or why they were adopted.
38. The lease terms are clear in its application in relation to the rent review calculations, as are the forfeiture terms in relation to the failure to pay the rent due. Therefore, from a valuation perspective, the level of comfort and security that can be provided to a landlord from this property is significant and should therefore be reflected in the capitalisation rate applied. From the market evidence provided by both parties, the tribunal considers a rate of 6% is appropriate.
39. With regards to The Leasehold and Freehold Reform Bill, as stated above, this is proposed legislation that has not yet been enacted and the timetable for such application is still uncertain. As such, whilst this should be factored into to the valuation, only limited weight should be given to it at this moment in time. However, the tribunal finds that an adjustment of 2.5% in the capitalisation rate is appropriate to reflect this.
40. The tribunal did not agree with the applicants' argument relating to applying the rate found in Farringdon Court as being more appropriate due to that property have greater security of recovery. As previously stated, in the event of non-payment at the subject property, rights of



forfeiture are applicable and an enforceable method of securing recovery.

40. The tribunal also preferred the respondent's evidence and submissions as to why 'Act Rights' are not relevant i.e. as both the existing lease and the new lease will have terms in excess of 80 years.
41. In conclusion the tribunal determines the premium payable by the applicant to the respondent is £36,750.00; *see Valuation attached.*

Name: Judge Tagliavini

Date: 9 January 2025

### **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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).