



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

Case Reference : **LON/00AH/OLR/2017/0683**

Property : **Flat 42 Silchester Court, London
road, Thornton Heath, Surrey CR7
6HT**

Applicant : **Hoinka Limited**

Representative : **Comptons Solicitors & Mr. Wilson
Dunsin, FRICS of Dunsin Surveyors**

Respondent : **Hafton Properties Limited**

Representative : **Carpenter Rose Solicitors & Mr.
Andrew Cohen, MRICS of Talbots
Surveying Services Ltd.**

Types of Application : **Lease Extension**

Tribunal Members : **Judge Tagliavini
Mr. N Martindale FRICS**

**Date and venue of
Hearing** : **13 September 2017 & 23 October
2017**

Date of Decision : **9 December 23017**

DECISION

Decisions of the tribunal

- (i) The tribunal determines the following:
- The Capitalisation Rate is: **6%**
 - The Unimproved Freehold Vacant Possession Value (FHVP) is: **£270,000**
 - Unimproved Extended Lease Value (ELV) is: **£267,300**
 - The Unimproved Existing Lease Value is: **£247,050.**
 - Relativity between FHVP and ELV is: **91.5%**
 - The Premium payable is: **£24,591**

The application

1. The Applicant seeks a determination of the premium payable to acquire a new lease of the subject premises pursuant to section 42 of the Leasehold Reform Housing and Urban Development Act 1993.

The issues for the tribunal

2. The Respondent having admitted the Applicant's right to a new lease, the tribunal are required to determine the sum payable, the Applicant having proposed in their Notice of Claim dated 16 August 2016, a premium of £10,000 and the Respondent in its Counter-notice dated 30 January 2017, £37,000. Consequently, the tribunal is asked to determine:
 - Capitalisation Rate
 - Unimproved Freehold Vacant Possession Value (FHVP).
 - Unimproved Extended Lease Value(ELV).
 - Unimproved Existing Lease Value.
 - Relativity between FHVP and ELV.
 - Premium payable.

The premises

3. The subject premises comprise a second floor three bedroom flat (with a small balcony) in a purpose-built block of twenty-nine units. The flat, which is the subject of this application is held pursuant a lease dated 28 April 2006 granting a term of 109 years with effect from 1 January 1976 (original lease dated 1 September 1980).

The hearing

2. The Applicant was represented by Mr. Dunsin, FRICS and the Respondent was represented by Mr. A Cohen. The tribunal was informed that the parties had agreed the following:
 - The valuation date is 17 August 2016.
 - The ground rent is £50 per annum doubling every 20 years.
 - The current ground rent is £600 per annum.
 - The gross internal floor area is 797sqft.
 - The deferment rate is 5%.
 - 1% uplift between Extended Lease Value and Freehold Vacant Possession Value.
 - Marriage value at 50%.

The Applicant's case

3. Mr. Dunsin spoke to his report dated 04 September 2017 in which, he relied upon the average of the sales of four comparable flats at 52 Silchester Court, 40 Jubilee Court, 22 Jubilee Court and 8 Jubilee court thereby producing a Freehold Vacant Possession Value (FHVP) of £208,546. However, Mr. Dunsin asserted that these comparable properties were in an improved and modernised condition and told the tribunal he had therefore deducted £35,000 from the freehold value of these comparable properties to reflect their better condition when compared to the subject flat.
4. Mr. Dunsin stated that the subject property had sold at auction on 19 September 2016 for £192,000 with a 68.28 lease which, having regard to The Land Registry House Price Index for Croydon equates to a sale price of £192,393 as at the valuation date. Relying on *Earl Cadogan v Cadogan Square Ltd* [2011] UKUT 154, Mr. Dunsin made a further deduction of 2.76% reflecting the benefit of the 1993 Act for a 68.23 lease resulting in an Existing Lease Value (without 1993 Act rights) of £187,083.
6. In determining the rate of relativity, Mr. Dunsin in his report relied upon *Arrowdale Limited v Coniston Court (North) Hove Limited* [2007] RVR 39 (LRA 72 2005) and *Nailrile Ltd v Earl Cadogan* [2009] LRA/114/2006, LRA/47/2007 and asserted that in the absence of

market evidence, relativity should be assessed by reference to the average of the graphs/opinions published by the RICS. In its Research, Leasehold Reform: Graphs of Relativity for Greater London and England Graphs, October 2009. Therefore, by taking the average of the five relevant graphs in Section 2 of the RICS Research Report, relativity for a 68.28 year-lease resulted in a relativity of 91.5%. Mr. Dunsin stated that by applying the relativity of 91.44% to the existing lease value (without 1993 Act rights) of £187,083, it resulted in a freehold value of £204,596. Mr. Dunsin stated that he did not regard the comparable properties as reliable evidence, as they required too many adjustments and insufficient information was available about their size.

7. Mr. Dunsin the told the tribunal that he had gone on to make various adjustments to the comparables in accordance with the guidance given in the RICS Information Paper: Comparable Evidence in Property Valuation and had taken into account the case of *The Earl Cadogan v Farrokh Faizapour & John Stephenson* [2012] UKUT 3 (LC), where the Upper Tribunal had referred to adjustments for time/market movement; lease length/relativity; condition, improvements, repair, disrepair; location; floor area and outside space. He had thereby made a deduction of £35,000 from the values of the comparable properties for their modernised and improved condition and a further adjustment to reflect size, floor level and location as Jubilee Court is a better and more desirable block than Silchester Court.
8. Mr. Dunsin applied the relativity figure of 91.5% to the freehold value of £204,596 thereby producing an existing lease value with nominal ground rent (without 1993 Act rights) of £187,205. Mr. Dunsin calculated that the onerous ground rents (without 1993 Act rights) should be capitalised at 7% producing a figure of £4,788. In his approach to determining the appropriate capitalisation rate Mr. Dunsin relied upon the case of *Roberts v Fernandez* LRA/14/2014 where ground rent increased every 20 years in line with the Retail Price Index, stating that the Upper Tribunal determined that the appropriate capitalisation rate is 7% where ground rent reviews are at 20 years or more. This sum of £4,788 was deducted from £187,205 producing an Existing Lease Value of £182,417.
9. Mr. Dunsin then applied a 1% uplift to the FHVP (£208,546) by multiplying the FHVP value by 99% and arriving at an Extended Lease Value of £202,550. By applying both the above agreed and contested components to his valuation, Mr. Dunsin told the tribunal arrived at a premium payable of £19,673.

The Respondent's case

9. Mr. Cohen also spoke to his report dated 21 August 2017 and told the tribunal that the subject flat was sold in a very poor condition thereby affecting the price achievable at the time of the sale. However, he had valued it on the basis of the original condition at the commencement of the lease in April 2006 which required it to be maintained to a reasonable standard, although not necessarily improved.
10. Mr. Cohen stated that in ascertaining the capitalisation rate and the value of the ground rent income, he had adopted the usual benchmark figure of 7%, based upon his personal opinion and previous settlements and negotiations. However, he asserted that in this instance, the doubling of the ground rent every 20 years provides for an overall annual compound growth rate of 3.7% and one considerably higher than the rate of inflation, thereby providing the receiver with an excellent growth rate over the period of the lease. In Mr. Cohen's opinion it was appropriate to adjust his benchmark figure of 7% to 6% as being better reflective of the capitalisation rate of the very attractive nature of this part of the investment.
11. Mr. Cohen submitted that the comparable properties at Jubilee Court (Flats 40, 22, 3 and 8) provided excellent comparables being in a block adjacent to Silchester Court and were of a similar size and in a similar location as he had been able to acquire specific information about them. However, as none of these comparable properties had a balcony or outside space included in their demise and in contrast to the subject property, he had added £10,000 to each flat to take account of this. Mr. Cohen went on to state that the average of the four sales at Jubilee Court equated to £329 per sq. ft. (£261,200) thereby producing an extended lease figure of the subject flat of £270,000.
12. In valuing the flat with the existing lease (in a No Act World) Mr. Cohen relied on the case of *Sloane Stanley v Munday* [2016] UKUT 0226 (LC), which emphasised the use of sales as primary evidence in preference to a reliance on graphs. Mr. Cohen stated he had inspected the subject property on 19 October 2016, just before its sale at auction in September 2016, for £192,000 had completed. He noted that the subject flat required refurbishment and modernisation as depicted in the photographs reproduced in his report. However, as the sale was in the Act world, the price had to be adjusted to reflect a no Act world. By utilising The Savills (2015) Enfranchisable Graph (86.85%) and The Savills Unenfranchisable Graph, (83.55%), Mr. Cohen stated that a lease of 68.37 years attracted a discount for Act world rights of 3.3% and he had arrived at a no Act world adjusted figure of £185,664 before any adjustments are made for condition. Mr. Cohen then allowed a figure of £30,000 to reflect differences in condition between the subject property and the comparables at Jubilee Court. Mr. Cohen,

therefore arrived at a figure of £215,000 (rounded down), for the Existing Lease Value in a no Act world.

13. Stating it to be a matter of good practice, Mr. Cohen tested the accuracy of his approach by utilising the sales of comparable properties at 52 Silchester Court (sold in March 2016 at £198,000 on a 58.8-year lease) and 28 Silchester Court (sold in September 2015 for £180,000) on a 59.33-year lease). He went onto state that as there was good sales evidence available, he did not seek to rely upon any graphs, but made an adjustment to reflect the onerous ground rent provision for the subject flat, thereby arriving at the Existing Lease Value excluding Act world rights of £220,000 and a premium payable of £35,904.

The tribunal's decision and reasons.

14. In reaching its decision the tribunal has regard to the relevant parts of Schedule 13 of the Act which sets out the basis on which, the valuation must be approached, *see Appendix I*.
15. The tribunal did not accept the evidence of either valuer in its entirety and adopted Mr. Dunsin's calculation of relativity of 91.5% here as Mr. Dunsin's representations on this point were clearer and more persuasive than those of Mr. Cohen. However, the tribunal is more persuaded by Mr. Cohen's arguments in respect of the appropriate capitalisation rate to apply in light of the onerous ground rent and finds this is properly represented at 6%.
16. However, the Tribunal adopted Mr Dunsin's approach, if not the figure of 7%, to the treatment of the onerous ground rents, by reducing the tenant's existing lease value by the value of the capitalised onerous ground rent. In doing so it adopted its FHVP value in assessing the acceptable level of ground rent and applied the same capitalisation rate of 6% to each income stream. The tribunal applies these determinations to the valuation attached and determines the premium payable is £24,591.

Name: Judge Tagliavini

Date: 10 December 2017

Appendix of relevant legislation

Schedule 13 of the Leasehold Reform, Housing & Urban Development Act 1993

The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord's interest

3(1) The diminution in value of the landlord's interest is the difference between—

- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
- (b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy on the following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date] any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date.

4A (1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

42 Silchester Court London Road Thornton Heath CR7 6HT

Lease Extension

Valuation Date	17/08/16
Expiry of existing lease	31/12/84
Existing Term unexpired	68.37
Capitalisation rate	6
Deferment rate	5
VP Value of Freehold	270000
VP Value of Long Leasehold	267300
Relativity: FH/ Short LH	91.50
VP Value of Short Leasehold	247050
Capitalised Onerous Ground Rent	4910

Landlords Present Interest

Fixed Present GR	600		
YP for 19.37 years @ 6%	11.2766	£6,766	
No deferment			
Fixed GR from first RR in 19.37 years	1200		
YP for 20 years @ 6%	11.4699		
PV £1 in 19.37 years @ 6%	0.3234	£4,451	
Fixed GR from second RR in 39.37 years	2400		
YP for 20 years @ 6%	11.4699		
PV £1 in 39.37 years @ 6%	0.1008	£2,775	
Fixed GR from third RR in 59.37 years	4800		
YP for 9.37 years @ 6%	6.8017		
PV £1 in 59.37 years @ 6%	0.0315	£1,027	£15,019
VP Value of Freehold	270000		
PV £1 in £68.37 years @ 5%	0.0356		£9,612
Total			<u>£24,631</u>

Landlords Propose Interest

VP Value of Freehold	270000		
PV£1 in 158.37 years @5%	0.0004	£111	

Marriage Value

Tenants Proposed interest	267300		
Add Landlords proposed interest	111	£267,411	
Tenants Present Interest	247050		
Less Capitalised Onerous Ground Rent	4910		
Add Landlords Present Interest	24631	£266,771	
Marriage Value			£640

Landlords Share of Marriage Value 50% **£320**

Landlords Present Interest £24,631
plus Landlords Share of Marriage Value £320

Enfranchisement Price **£24,951**

RICS Palatable GR taken at 0.25% of £270,000		675	
Fixed Present GR		0	
YP for 19.37 years @ 6%	11.2766		£0
No deferment			
Fixed GR from first RR in 19.37 years		525	
YP for 20 years @ 6%	11.4699		
PV £1 in 19.37 years @ 6%	0.3234		£1,947
Fixed GR from second RR in 39.37 years		1725	
YP for 20 years @ 6%	11.4699		
PV £1 in 39.37 years @ 6%	0.1008		£1,994
Fixed GR from third RR in 59.37 years		4525	
YP for 9.37 years @ 6%	6.8017		
PV £1 in 59.37 years @ 6%	0.0315		£968
Capitalized Onerous Ground Rent			£4,910

Address	Date	Price	Comments	Price	Condition	FH Uplift	Time	Adj price	Vol m3	per m3	Adopted	GF m2	per m2	GIA m2	per m2	Adopted	
No 8	Nov-03	£775,000	R says discounted	£912,000			3.25%	£940,000		£2,039	£2,100		£7,875				
			M says inflated	£700,000				4.30%	£730,000	461	£1,584		82.35	£6,115	119.37	£6,215	
			M's basis	£775,000				4.30%	£808,000		£1,753				£9,812		£6,215
No 10	Jan-04	£900,000	R	£900,000	£25,000	1%	1.00%	£940,000	428	£2,196	£2,100	78.6	£11,959	152	£6,184		
			M	£900,000		2%	3.23%	£948,030		£2,215				£12,061		£6,237	£6,215
No 15	Jul-04	£1,050,000	R	£1,050,000		1%		£1,060,000		£2,103	£2,100		£4,711	225	£4,711		
			M	£1,050,000		2%		£1,071,000	504	£2,125		100	£10,600		£10,710	£6,215	
			M with reduced GIA	£1,050,000		2%		£1,071,000		£2,125					£10,710	194	£5,412
									392			77.72		102.56			
		Applied to No 14			No 8 R	No 8 M	No 8 M	No 10 R	No 10 M	No 15 R	No 15 M						
		Volume	392		£799,306	£620,738	£687,063	£860,935	£868,289	£824,444	£833,000						
		GF	77.72		£887,150	£688,957	£762,571	£929,476	£937,416	£823,832	£832,381						
		GIA	102.56		£807,627	£627,199	£694,215	£634,253	£639,671	£483,172	£488,186						