



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

<b>Case reference</b>	:	<b>LON/00AH/OLR/2017/0786 LON/00AH/OLR/2017/0787</b>
<b>Properties</b>	:	<b>Flats 12 and 41 Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE</b>
<b>Applicant</b>	:	<b>Peter Michael Rhodes (1) Antoinette Marie-Therese Beveridge (2)</b>
<b>Representative</b>	:	<b>Mr N Agnihotri of Counsel instructed by Amphlett Lissimore Solicitors</b>
<b>Respondent</b>	:	<b>The Raphael Freshwater Memorial Association Limited</b>
<b>Representative</b>	:	<b>Ms G de Cordova of Counsel instructed by Wallace LLP</b>
<b>Type of application</b>	:	<b>Application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993</b>
<b>Tribunal members</b>	:	<b>Judge N Hawkes Mr W R Shaw FRICS</b>
<b>Date and venue of hearing and inspection date</b>	:	<b>Hearing 17<sup>th</sup> and 18<sup>th</sup> October 2017 at 10 Alfred Place, London WC1E 7LR and inspection 21<sup>st</sup> November 2017</b>
<b>Date of decision</b>	:	<b>21<sup>st</sup> December 2017</b>

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The premium payable in respect of Flat 12 Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE is £46,587.
- (2) The premium payable in respect of Flat 41 Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE is £46,587.

## **The background**

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for the determination of the premiums payable for the grant of new leases of Flat 12 Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE ("Flat 12") and Flat 41 Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE ("Flat 41").
2. The respondent is the freehold owner of Cumberland Court, 21 Cross Road, Croydon, Surrey CRO 6TE ("the Building"). The Building comprises an eleven storey, purpose-built block of flats constructed in the early 1970s. It is adjacent to a railway line and very close to East Croydon station. Flat 12 is situated on the third floor of the Building and Flat 41 is situated on the 10th floor. Both of the flats have two bedrooms.
3. By notices served on 28 and 30 September 2016 pursuant to section 42 of the 1993 Act, the applicants claimed to exercise the right to acquire new leases of the Flats. The landlord served counter-notices pursuant to section 45 of the 1993 Act on 3 December 2016.
4. Applications for the determination of the premiums payable and for the determination of the disputed terms of acquisition of the new leases were made to this Tribunal on 27 May 2017.

## **The issues**

5. The surveyors prepared a joint statement in advance of the hearing confirming the areas of agreement and disagreement. The following matters were agreed prior to the hearing:
  - (i) The valuation dates are: 28<sup>th</sup> September 2016 (Flat 41) and 30<sup>th</sup> September 2016 (Flat 12);
  - (ii) The number of years unexpired: 58 years in respect of each flat;

- (iii) Original lease term: 99 years from 29th September 1975;
  - (iv) Deferment Rate: 5%;
  - (v) Ground Rent capitalisation: 6%/7% (but said to be not relevant to the valuation);
  - (vi) Floor Area: 63m squared (Flat 12) and 60.51m squared (Flat 41);
  - (vii) 1% uplift for freehold value;
  - (viii) The form of the new leases has been agreed.
6. The following matters remain to be determined by the Tribunal:
- (i) The value of the existing short lease;
  - (ii) The value of the new extended lease;
  - (iii) Extent of Improvements; and
  - (iv) The premium payable.

### **The hearing and inspection**

7. The applicants were represented by Mr Agnihotri of Counsel and the respondent was represented by Ms de Cordova of Counsel at the hearing.
8. The Tribunal has been provided with a copy of an expert report dated 11<sup>th</sup> October 2017 prepared by Ms Penny Veness BA FRICS on behalf of the applicants and with a copy of an expert report, also dated 11<sup>th</sup> October 2017, prepared by Mr Robin Sharp BSc FRICS on behalf of the respondent. The Tribunal also heard oral evidence from both Ms Veness and Mr Sharp.
9. The Tribunal inspected the Flats and the common parts of the Building on 21<sup>st</sup> November 2016. The parties' representatives were not expected to be present and did not attend the inspection.
10. The Tribunal also inspected the exterior and locality of the properties relied upon by both experts as being comparable to the Flats on 21<sup>st</sup>

November 2016. The Tribunal's findings during the inspection, where relevant to this decision, will be set out below.

### **The law**

11. Schedule 13 to the 1993 Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable to the landlord.
12. 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.
13. The value of the landlord's interest 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) applying the assumptions and requirements set out in paragraph 3 of Schedule 13 to the 1993 Act.
14. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50% (but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil).
15. For the purpose of the calculation of marriage value, it is necessary to establish the value of the interest of the lessee under the existing lease and also the value of the interest of the lessee under the extended lease.
16. The first value is to be arrived at pursuant to paragraph 4A of Schedule 13 to the 1993 Act and the second value is to be arrived at pursuant to paragraph 4B of Schedule 13. Both of these paragraphs require the open market value of the interest to be assessed on the assumption that there are no rights under the 1993 Act in respect of the subject property.
17. Paragraph 4A of Schedule 13 includes provision that:  
  
*(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—*

[...] (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; [...].

18. The respondent referred the Tribunal to the case of *Shalson v Keepers and Governors of the Free Grammar School of John Lyon* [2004] 1 AC 802 on the issue of improvements and the Tribunal has taken this authority into account in reaching its determination.

### **The Tribunal's determinations**

#### *The existing lease value*

19. The Tribunal has firstly considered the issue of whether or not the two Flats are likely to be different in value.
20. Flat 12 is on the third floor of the Building and Flat 41 is on the tenth floor. Accordingly, if the sole lift serving the Building is unavailable for any reason, it will be easier to access and leave Flat 12 than Flat 41. In addition, Flat 41 faces the railway and Flat 12 faces away from the railway.
21. On inspecting the properties, the Tribunal noted that in Flat 41 the sound of trains is louder than it is in Flat 12. However, due to the height of Flat 41, the difference is not great. Further, Flat 41 has extensive views.
22. Having taken all of these factors into consideration, the Tribunal determines that it is likely, on the balance of probabilities, that the respective advantages and disadvantages of each Flat cancel each other out and that the two Flats are of similar value.
23. In order to arrive at a figure for relativity, Ms Veness calculated the average of various graphs which she relied upon and did not use the market evidence as part of her calculation.
24. As noted by the respondent, Ms Veness used the long lease rather than the freehold value in her calculation and some of the graphs used by Ms Veness include 1993 Act rights. Ms Veness has made no adjustment for 1993 Act rights, which we consider to be valuable.
25. At [127] and [128] of Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC) the Upper Tribunal stated:

*127 In his opening submissions, Mr Jourdan for the lessor of Flat 5 described the benefit of rights under the Act in this way:*

*“Act rights are valuable, for a number of reasons. The tenant has the right, at a time of his choosing, to serve a notice claiming a new lease. He can buy the lease of the flat he wants paying, in effect, only part of the price immediately, with a further payment due at a time of his choosing. The price is fixed on a basis which excludes the tenant's overbid whilst guaranteeing him 50% of the marriage value. He has the right to have the price determined by an independent tribunal, and is not at risk as to costs (unless he acts unreasonably). If the claim proceeds, it can take a considerable time before the price is paid, during which period he pays no interest but only the ground rent. If property prices go up, he keeps the increase in the price after the valuation date. If prices go down, he can withdraw the notice and serve another one a year later. The price is determined on a basis which disregards any effect of improvements, so meaning that he can make improvements which might not be economic if he held only an unenfranchiseable lease.”*

*128 We did not understand Mr Rainey to disagree with this description of rights under the Act. We agree that the Act confers these substantial benefits on lessees who qualify under it.*

26. Mr Sharp relied upon the Beckett and Kay relativity graph (2017 first revision) and took account of market evidence in the form of the short lease sale of Flat 8 Cumberland Court. Flat 8 sold in March 2016 for the sum of £183,300 and it is on the second floor, directly below Flat 12.
27. The applicants submit that it is not appropriate to rely upon the Beckett and Kay graph for three reasons, namely, that this graph is mortgage dependent, it has not been “peer reviewed”, and it was not available at the valuation date.
28. Mr Sharp gave evidence, which the Tribunal accepts, that most properties in Croydon are purchased with the benefit of a mortgage.
29. Further, the Tribunal is of the view that the Beckett and Kay graph is admissible and relevant notwithstanding the absence of a “peer review” and notwithstanding that it was not available at the valuation date. None of the potentially relevant relativity graphs are “peer reviewed” and agreed upon and, whilst the graph in question was not available at the valuation date, the relevant data contained in the graph pre-dates the valuation date.
30. Although Ms Veness stated that she did not place reliance upon market evidence, both experts analysed the short lease sale of Flat 8 Cumberland Court and, through different means, they both reached a

figure in the region of £190,000. The sum of £190,000 calculates to 70% relative to the freehold value adopted by the Tribunal.

31. We preferred Mr Sharp's evidence on relativity and adopt his conclusion that relativity is 70.94%, noting that this sits well with the evidence relating to the short lease sale within Cumberland House.

*The extended lease value*

32. Flat 17 Cumberland Court sold for £280,000 in August 2017, that is approximately 11 months after the valuation date. The Tribunal prefers Mr Sharp's evidence that property values in the area have reduced since the valuation date but are now recovering. Accordingly, the Tribunal does not adopt Mrs Veness's proposed reduction of the sale price in order to adjust for inflation.
33. Mrs Veness also made adjustments in the sum of £7,500 in respect of future communal works and £12,500 for modernisation and a further adjustment of £10,000 for disruption caused by adjoining building works.
34. Mr Sharp proposes a reduction of £6,000 for the communal works and a further £1,000 for improvements (see below). The Tribunal considers that it is necessary to balance the need to spend money on the communal works against the benefit to be obtained and finds that, in all the circumstances, a total deduction of £7,000 is appropriate.
35. As regards the issue of disruption, the Tribunal accepts the respondent's contention that, for most purchasers, the short-term noise disruption is unlikely to be of greater significance than the prospect of the longer-term improvement in surrounding properties that would result from the building works. Accordingly, the Tribunal has made no reduction on account of disruption from adjoining building works.
36. Both of the experts relied upon comparable sales evidence relating to a number of different properties. The Tribunal considers that all of Mrs Veness's proposed comparable properties, save for 39A Stanley Road, are located too far from the subject Flats to be compelling. Unfortunately, the Tribunal was not provided with clear evidence regarding the size of 39A Stanley Road and the Tribunal considers that it is therefore unable to place weight upon the sales evidence relating to this property.
37. Mr Sharp's proposed comparable properties are closer to the Building than Mrs Veness's and the Tribunal considers the sales evidence relating to these properties to be of greater relevance. However, the Tribunal also considers that there is force in the applicants' contention that these properties are in a better location.

38. Having viewed the exterior and locality of these properties, the Tribunal agrees with Mr Sharp that the sale price of Flat 17 at £280,000 is a good starting point to determine the value of the two subject flats.
39. Mr Sharp's comparable sales at Flat F Westburn Court and 3 Boscombe House, are both better located, and with much longer lease terms. His comparables at 27 Lloyd House and 4 The Elms have shorter lease terms of 90 and 96 years respectively. In view of these factors, the Tribunal considers £280,000 a little excessive and adopts £276,000 as the base line value.
40. The locations of both subject flats have advantages and disadvantages and, unlike Mr Sharp, the Tribunal considers no further adjustment is necessary save for those in respect of the tenant's improvements and the communal heating system works. The Tribunal therefore makes a further deduction of £7,000 which results in a long lease value of £269,000 for the subject flats. The agreed 1% is to be added to obtain the freehold value.

#### Improvements

41. The Tribunal accepts the respondent's contention that the Tribunal must distinguish between works of improvement and works of renewal and repair.
42. Lord Bingham states at paragraph 3 of *Shalson* (the respondent's emphasis added):

*"This statutory language makes plain that the price will be diminished under this head if and only if it is found (i) that **works of improvement (meaning works other than renewals and repairs)** have been carried out by the tenant or his predecessors in title, (ii) that the tenant or his predecessors in title have carried out these works at their own expense, and (iii) that **these works have increased the value of the house...**" (emphasis added).*

Further, at paragraph 17 of *Shalson* Lord Hoffman states:

*"For the tenant to secure a reduction, he must therefore, first identify improvements which he or his predecessors have carried out at their own expense, and secondly, satisfy the tribunal that but for those improvements the house and premises would have been worth less."*

43. The Tribunal accepts the respondent's analysis that, firstly, an improvement must be identified and distinguished from any repair or



renewal. Then, it must be established that that particular improvement resulted in an increased value of the flat.

44. Mrs Veness did not seek to make any clear distinction between those elements of works which would constitute renewal or repair and those which would constitute an improvement. She did not reflect on what the added value to the properties was and she did not make any deduction for any element of repair.
45. In contrast, Mr Sharp informed the Tribunal that modern equivalents, such as replacement kitchens or bathrooms, do not in his opinion constitute an "improvement" for the purposes of the Act. However, he did accept that when it comes to kitchens and bathrooms, the purchaser may pay a little more for those that have been "newly done" or where there are "new guarantees" in place.
46. The Tribunal accepts the legal submissions advanced by the respondent and prefers the evidence of Mr Sharp on the issue of improvements to that of Mrs Veness. Accordingly, the Tribunal adopts the allowance made by Mr Sharp for improvements.

### **Conclusion**

47. Applying the above determinations, the Tribunal finds that the premium payable by each of the applicants for the grant of a new lease is £46,587.
48. A copy of the Tribunal's valuation is attached to this decision.

Judge N Hawkes

21 December 2017

## Appendix

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## New Lease Claim

Present lease	58 years unexpired		
Valuation date	28 and 30 September 2016		
Long lease value	£269,000	Freehold value	£271,690
Existing lease value	£192,737	70.94%	
YP = 6%	PV = 5%		

## Diminution in value of Landlord's interest

Value before grant of new lease

Term

Rent	£60		
YP 24.255 years @ 6%	12.611	757	
Rent	£90		
YP 33.739 years @ 6%	14.333		
Deferred 24.255 yrs @ 6%	0.243	313	
			1,070

Reversion

Flat Value (F/H)	271,690		
Deferred 58 years @ 5%	0.059	16,030	
			17,100

LESS value after grant of new lease

Reversion

Flat value (F/H)	271,690		
Deferred 148 years @ 5%	0.0007	190	
			-190

Diminution in value of Landlord's interest

16,910

## Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest	190		
Tenant's proposed interest	269,000		
		269,190	

LESS aggregate of values prior to grant of new lease

Landlord's interest	17,100		
Tenant's interest	192,737		
		209,837	

Marriage value

59,353

50% 29,677

Premium

46,587