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

**Case reference** : LON/00BA/OLR/2017/0134

**Property** : 134A Kingston Road, London SW19  
1LY

**Applicant** : Sean Patrick Joseph Hughes

**Representative** : Mr. Mathew Price BSc(Hon) MRICS

**Respondent** : Munther Afram Matti Suleiman

**Representative** : Mr. A Radevsky, counsel

**Type of application** : Lease extension

**Tribunal members** : Judge Tagliavini  
Mr. Charles Norman BSc FRICS

**Date of determination  
and venue** : 13 June 2017  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 21 July 2017

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**DECISION**

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## Summary of the tribunal's decision

The premium payable for the lease extension of the subject property is £23,750 (twenty-three thousand and seven hundred and fifty pounds).

## Background

1. This is an application for an extension of a lease pursuant to section 48 of the Leasehold Reform Housing and Urban Development Act 1993. The subject property is a two bedroom flat situate of the first and second floors located above commercial premises. By a Notice dated 12 July 2016, the Applicant claimed the right to extend the existing 99-year lease dated 13 May 1988, for a premium of £21,000 (twenty-one thousand pounds). The Respondent served a counter-notice dated 14 September 2016 in, which the Applicant's right to acquire a new lease was admitted and a counter-proposal for the premium payable, made of £86,750 (eighty-six thousand seven hundred and fifty pounds) for the grant of a new lease.

## The issue

2. At the date of hearing the parties had agreed all issues relevant to the lease extension except for the premium payable. The parties agreed:
  - Valuation date 14 July 2016.
  - Unexpired term at valuation date 70.84 years.
  - Current rent reserved £50 per annum rising to £100 per annum in 4.84 years and £150 per annum for the remaining 33 years of the term.
  - There are no tenant's improvements to be assessed.
  - Capitalisation of ground rents – 7%
  - Deferral rate – 5%
  - Gross internal floor area – 1250 square feet.
  - Long lease value £500,000
  - FHVP £505,000

### The hearing

3. The tribunal was provided with a level arch file of documents which included the reports of each party's valuer.

### The Applicant's case

4. Mr. Price acted as both the representative and expert valuer for the Applicant. In his oral evidence to the tribunal Mr. Price relied upon his report dated 1 June 2017. Mr. Price told the tribunal that he had very extensive knowledge of the area in which the subject property is located although accepted in questioning that he or his employer had never had an office in the South Wimbledon area. Mr. Price was unable to confirm if flats 132/A and 134A are identical although he accepted they are very similar properties.
5. Mr. Price stated that he did not consider that 132A had been subject to an open market transaction, because it had not been marketed using agents' details or advertised on the market and falls short of the RICS and International Valuation Standards definition of Market Value. In addition, Mr. Price relied on a witness statement of Mr Roger Song, who did not attend the tribunal hearing, but who had produced a short witness statement verified with a statement of truth dated 25th of May 2017.
6. In that statement, Mr Song, a director of Appletree homes Ltd, said that his statement was intended to support the evidence of Mr Price in these proceedings. Mr Song's evidence was that he had assisted the previous vendor of 132A Kingston Road. Owing to the vendor's financial circumstances the sale had to be expeditious. Mr Song became involved in early 2016. In mid-February 2016, he introduced the buyer as a cash buyer. The property had previously been offered to the sitting tenant. The price was agreed in early March 2016 and the sale was completed before the end of March 2016 as the buyer wished to avoid the increase stamp duty which came into force in April 2016. Mr Song's evidence was that owing to the speed and private nature of the sale, he was never required to draw up sales

particulars nor did he provide floorplan or any other marketing documentation. He also stated that both buyer and seller are nationals of South Korea but he had no reason to believe that there was any relationship between them or any other affiliation which would have affected the sale of the property. Mr. Price submitted that the sale of 132A Kingston Road was an unreliable comparable as it had not been exposed to the open market, as the buyer and seller had been introduced to each other by the managing agent and therefore not an open, competitive market and it was questionable as to whether the best price had been achieved.

7. Mr. Price preferred to rely upon a number of relevant graphs excluding those referable to Prime Central London as the subject property is located in South Wimbledon. In his report, Mr. Price identified the following graphs and relativities at 70.84 years:

Becket & Kay: 93.14%  
South East Leasehold: 93.34%  
Nesbitt & Co: 91.42%  
Austin Grey: 93.99%  
Andrew Pridell: 93.00%

8. In addition, Mr. Price referred the tribunal to graphs drawn from previous tribunal decisions and the suggested relativities at a term of 70.84 years:

LEASE: 93.76%  
CEM Inner London: 91.7%  
CEM Rest of England: 94.16%  
John D Wood Pure Tribunal: 90.09%

Mr. Price concluded his report and his evidence by asserting that the sale of 132A Kingston Road cannot be relied upon but instead an average of the Greater London and England graphs produces a more reliable relativity of 92.98% giving rise to a value of the subject property at the valuation date of £469,549 and a premium of £23,729.

## The Respondent's case

9. The Respondent relied upon the report of Mr. Tibbatts MRICS MEWI dated 15 May 2017 and his oral evidence to the tribunal. In his evidence Mr. Tibbatts asserted that the sale of Flat 132A provided good reliable comparable evidence on which to base his valuation. Mr. Tibbatts described flats 132A and 134A as identical in layout, position and construction with both flats in good condition. Flat 132A was sold on 31 March 2016 (three and a half months before the valuation date) for £350,000 with an unexpired leasehold interest of 71.4 years (0.56 years longer than the unexpired term for Flat 134A as at the valuation date).
10. Mr Tibbatts considered that 132A Kingston Road was a relevant comparable because it had been subject to proper marketing. He stated that 132A Kingston Road was exposed to the market in the most appropriate manner, in accordance with the wishes of the previous owners, to affect its disposal at the best price reasonably obtainable in accordance with market and this method of sale was deemed to be the most appropriate to take the best price in the market. Mr. Tibbatts told the tribunal the agent believed that a better price was unlikely to be achieved by wholesale advertising over an extended period of time and personal and cultural reasons did not want to advertise, widely, their intentions. There had been sufficient time to allow 132A Kingston Road, with a 71.5 year lease, to be brought to the attention of an adequate number of market participants, one of whom was successful.
11. Mr Tibbatts told the tribunal that in his opinion, proper marketing did not require full estate agents' details and brochures to be made and produced. It did not require the property to be listed online with multiple agencies or for advertisements to be placed in local and national press. He stated that an estate agent taking instructions to sell after he/she has seen the property may have an applicant in mind

whom the agent believes would immediately buy the property on which the agent had just received instructions. In his report, Mr Tibbatts considered that the value of rights under the act were worth 2% of the short leasehold value.

12. Mr. Tibbatts asserted that Flat 132A had been subjected to proper marketing although for personal reasons and cultural reasons the owners of this flat did not wish to advertise widely their wish to sell. Mr. Tibbatts relied upon the conjoined appeals in the decision in *Nailrile Limited v Earl Cadogan* LRA/114/2006, LRA/47/2007, LRA/89/2007, LRA/90/2007, LRA/106/2007 and *Munday* [2016] UK UT 0223 (LC) to assert that the best evidence to be relied was the market evidence available rather than placing a reliance on graphs. Mr. Tibbatts stated he allowed 2% deduction for 1993 Act rights as a lease of 80 years or more would not attract any deduction. Therefore, in reliance on the sale of Flat 132A for £350,000 less 2% (£7,000), this provided an existing lease value of £342,000. The extended lease value of the subject flat having been agreed by the parties' valuers at £500,000 plus 1% this provided a FHVP of £505,000 and a market relativity of 68% (£343,000/£505,000), thereby providing a premium value for a new lease of Flat 134A of £86,750.
13. In his closing submissions to the tribunal Mr. Radevsky relied upon the sale of Flat 132A as providing an excellent comparable on which the tribunal should prefer to the five randomly assorted graphs relied upon by Mr. Price and therefore should accept Mr. Tibbatt's evidence and valuation including the 2% deduction for Act rights as Mr. Price had not challenged this.

### The tribunal's determination and reasons

14. The tribunal finds that the subject property comprises a split-level flat above a dental practice fronting Kingston Road, approximately 0.8 of a mile south of Wimbledon town centre. This is a suburban shopping street with flats over facing a busy road. Relying on its knowledge and expertise, the tribunal finds that this is a comparatively valuable area in London though less valuable than central Wimbledon. The

property is accessed via a rear external staircase accessed via an archway. The property comprises three bedrooms, two reception rooms kitchen and bathroom. The internal floor area is 1250 ft. and is therefore a large flat. Both valuers agreed that there are no improvements required to be taken into account at 132A Kingston Road and the experts agreed that this comparable is almost identical to the subject property as to size, location and style. This comparable property was subject to an unextended lease of 71.4 years when it was sold on 31 March 2016 but neither valuer considered that adjustment for market change between the respective sale and valuation dates was required.

14. Both experts referred to the RICS International Valuation Standards 2013/14. However, the tribunal is required to make its determination in accordance with the relevant statutory provisions and in particular, Part II of Schedule 13 of The Leasehold Reform Housing and Urban Development Act 1993. Paragraph 3(2) of Schedule 13 states that "*the respective value of relevant interests 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...*" In addition, RICS Practice Statement 1 makes clear at paragraph 6 that the RICS standards are non-mandatory for valuations prepared for litigation purposes or those where the RICS practice statement "surveyors acting as expert witnesses" applies, which it does in this matter.
15. The tribunal regards that the RICS International Valuation Standards are therefore not directly relevant to these proceedings. The tribunal also addressed the issue of whether the sale of 132A Kingston Road was a reliable open market sale on which the tribunal could place sufficient weight. Although the managing agent did not want his name referred to in Mr Tibbatts' expert report, the tribunal accepts he had confirmed the details of the sale to him in writing.
16. The tribunal considered it surprising that neither expert has referred to any other short leasehold sales near the property, or failing that the more general area. South Wimbledon is a populous area with a large stock of flats e tribunal and finds it difficult to accept that no other short leasehold sales could have been identified. However, in the absence of any other

comparable sales, the tribunal must do the best it can with the evidence before it.

17. The tribunal does not consider that the sale of 132A Kingston Road is a reliable comparable. Although the previous owner of this flat did not want for personal and cultural reasons, to advertise the sale widely, this intention, does not amount to the usual way a property is marketed and which, would usually include the preparation of agents' particulars and the publication of the sale. The lack of these features casts serious doubt on whether the price achieved was in fact a market value.
18. The tribunal also gave some weight to the witness statement of Mr Song although he did not give oral evidence. The tribunal was told at the hearing that the additional stamp duty payable had the sale not completed expeditiously, was in the order of £10,000, and whilst a significant sum, the tribunal finds it is not in itself a substantial proportion of the total price paid. The tribunal is therefore not persuaded that this factor alone could justify a failure to market the property in the usual way. Further, the fact that both vendor and purchaser were co-nationals of South Korea, does in the tribunal's view cast further doubt on the sale being on an open market basis, as the property is situated in Wimbledon.
19. The tribunal was also surprised that Mr Tibbatts had assessed the value of rights under the Act at only 2%. The highly valuable nature of the rights is set out in *Nailrile*, and taking into account the unexpired term of 71 years, the tribunal regards that the rights would be substantially more valuable than Mr Tibbatts suggests. In addition, the tribunal does not accept his evidence that the Act rights have no value when the unexpired term exceeds 80 years because no marriage value is then payable. We consider that Mr Tibbatts analysis conflates two different matters namely marriage value and the other advantages conferred by the Act.
20. In rejecting 132A Kingston Road as a reliable comparable and in the absence of any other comparable evidence, the tribunal is constrained to rely on graphs of relativity. The tribunal accepts that there are disadvantages within the graphs but accepts Mr Price's evidence that these graphs are widely used in relativity matters outside of Prime Central



London and therefore considers that the approach adopted by Mr Price is reasonable and preferable to the approach taken by Mr. Tibbatts.

21. In conclusion, the tribunal finds that the premium payable for the grant of a new lease is £23,750 (twenty-three thousand seven hundred and fifty pounds).

**Name:** Judge Tagliavini

**Date:** 26 July 2017

APPENDIX

IN THE MATTER OF 134A KINGSTON ROAD LONDON SW19 1LY  
VALUATION BY THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

|   |   |       |              |              |             |
|---|---|-------|--------------|--------------|-------------|
| Date of Valuation   |   |       |              |              | 12-Jul-2016 |
| Lease expiry date   |   |       |              |              | 25-Dec-2084 |
| Unexpired Term 70.84 years  |   |       |              |              | 70.84 years |
| Lease expiry date   |   |       |              |              | 12/05/2087  |
| Virtual Freehold Value of Flat  |   |       | (agreed)     |              | £ 505,000   |
| Value of 70.84 year lease of Flat A @ 92.98 % of virtual freehold value |   |       | (determined) |              | £ 469,549   |
| Ground rent capitalisation rate   |   |       | (agreed)     | 7.00%        |             |
| Reversionary deferment Rate   |   |       | (agreed)     | 5.00%        |             |
| Premium Payable   |   |       |              |              | £23,730     |
| <b>Diminution in Value of Freeholder's Interest</b>                     |   |       |              |              |             |
| <b>Term 1</b>   |   |       |              |              |             |
| Ground rent   |   |       |              | £ 50.00      | per annum   |
| 4.84 Years' Purchase  | @ | 7.00% | 3.9893       |              | £ 199.47    |
| <b>Term 2</b>   |   |       |              |              |             |
| Ground rent   |   |       |              | £ 100.00     | per annum   |
| 33 Years' Purchase  | @ | 7.00% | 12.7538      |              |             |
| PV £1 in 4.84 years   | @ | 7.00% | 0.7207       |              |             |
|   |   |       | 9.091664     |              | £ 919.17    |
| <b>Term 3</b>   |   |       |              |              |             |
| Ground rent   |   |       |              | £ 150.00     | per annum   |
| 33 Years' Purchase  | @ | 7.00% | 12.7538      |              |             |
| PV £1 in 37.84 years  | @ | 7.00% | 0.0773       |              |             |
|   |   |       | 0.985569     |              | £ 147.88    |
| Reversion   |   |       |              |              |             |
| value of virtual freehold   |   |       |              | £ 505,000    |             |
| Present Value of £1 in 70.84 years time @ 5%                            |   |       | 0.03155      |              |             |
|   |   |       |              |              | £ 15,932.75 |
| Freeholder's present interest   |   |       |              |              | £ 17,199.26 |
| Less  |   |       |              |              |             |
| <b>Freeholder's Proposed Interest</b>                                   |   |       |              |              |             |
| value of virtual freehold   |   |       |              | £ 505,000    |             |
| Present Value of £1 in 160.84 years time @ 5%                           |   |       | 0.00039      |              |             |
|   |   |       |              |              | £ 196.95    |
| Diminution in Value of Freeholder's Interest                            |   |       |              |              | £ 17,002.31 |
| <b>Calculation of Marriage Value</b>                                    |   |       |              |              |             |
| <b>Value of Proposed Interests</b>                                      |   |       |              |              |             |
| Leaseholder   |   |       |              | £ 500,000.00 |             |
| Freehold after sale   |   |       |              | £ 196.95     |             |
| <b>Total Value of Proposed Interests</b>                                |   |       |              | £ 500,196.95 |             |
| <b>Value of Present Interests</b>                                       |   |       |              |              |             |
| existing lease (£500,000 @ 92.98%)                                      |   |       |              | £ 469,549.00 |             |
| freeholder (see above)  |   |       |              | £ 17,199.26  |             |
| <b>Total Value of Present Interests</b>                                 |   |       |              | £ 486,748.26 |             |
| Hence Marriage Value, Difference Between Proposed and Present Interests |   |       |              |              | £ 13,448.69 |
| Divide Marriage Value equally between the Parties                       |   |       |              |              | £ 6,724.34  |
| Premium Payable   |   |       |              |              | £ 23,726.66 |

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£23,730