



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

Case reference : **LON/00AF/OLR/2018/0486**

Property : **53A, Shepperton Road, Petts Wood,
Orpington Kent BR5 1DL**

Applicant : **Michael Barrie Hutchings**

Representative : **Mr J R Card FRICS of Maitlands
Acorn Professional Limited,
chartered surveyor instructed by
Judge & Priestley Solicitors**

Respondent : **Vagards Investment Corp**

Representative : **Malcolm Dear Whitfield Evans LLP
Solicitors**

Type of application : **Application to determine the
Premium and other terms of
acquisition under s48(1) Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Tribunal Judge Dutton
Mrs H C Bowers BSc(Econ)MSc
MRICS**

**Date of determination
and venue** : **10 Alfred Place, London WC1E 7LR
on 24th July 2018**

Date of decision : **24th July 2018**

DECISION

Summary of the tribunal's decision

The Tribunal determines that the premium payable for the extended lease in respect of the first floor flat at 53A Shepperton Road, Petts Wood, Orpington Kent BR5 1DL (the Property) shall be £6,184.00 as set out on the attached valuation.

The terms of the lease are as set out below at paragraph 10

If the Applicant wishes to proceed with an application under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules) the directions to do so are set out below.

Background

1. This application was made by Mr Hutchings following the service of an Initial Notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The suggested premium was £5,200
2. This prompted a Counter-Notice under section 45 of the Act from Vagards Investment Corp accepting Mr Hutchings right to acquire a new lease but putting forward a suggested premium of £13,900.
3. It appears that despite attempts to negotiate a settlement the Respondent did not participate in the proceedings. An application was issued on behalf of Mr Hutchings under section 48 of the Act and the matter came before us for hearing on 24th July 2018.
4. A letter had been received from Malcolm Dear Whitfield Evans LLP solicitors for the Respondent dated 21st June 2018 indicating that the Respondent's expert was not available for the hearing, which had been fixed in June. They were told that they would need to apply for a postponement, but did not do so. Further, no expert evidence had been adduced and we were told by Mr Card at the hearing that despite attempts to contact the expert for the Respondent he had no response.
5. The matter therefore proceeded in the absence of and non-participation of the Respondent. We were provided with a copy of the valuation report from Mr Card dated 16th July 2018 and a bundle of papers from Judge & Priestley, which included the proposed lease and a claim for costs under the provisions of Rule 13 of the Rules.
6. Mr Card took us through the comparable evidence he relied upon to sustain a long lease value for the Property of £298,000, which uplifted by

1% for the freehold value gave a figure of £301,100. He had applied a capitalisation rate of 6.5% and a deferment rate of 5%. As the remaining lease term was some 83.5 years the question of marriage value did not arise. We noted his calculation for the capitalisation of the ground rent, which contained an error in that the final rent for the last period under the lease was £120 and not £125 as he recorded.

7. It should be recorded that the adjustments he had made to the comparables were based on his opinion and his experience. It is not a criticism but there was no documentary evidence to back up these adjustments.

The Tribunal's determination

8. We asked Mr Card about the comparables he had adduced. We considered that the property at 34 Shepperton Road was unhelpful as it was based upon an asking price and not an actual sale. We disregarded same. As to the remainder we made the following findings.
 - 32 Shepperton Road – we considered that the deduction for the ground floor element was too great. The subject property has the benefit of the roof space, for which no allowance has been made. Whilst it may be that the ground floor properties command a slightly higher value we consider that with the benefit of perhaps a quieter location on the first floor and the ability to use the roof space a reduction of £10,000 is too much. We reduce this to £5,000 giving a value of £295,000
 - 49a Shepperton Road – The only issue we take with this comparable is the allowance of £5,000 for 'possible' off street parking. The sales particulars refer to a driveway but there is no indication that this gives the lessee of the first floor property any parking rights. We there disregard that element, giving a value for this comparable of £303,000.
 - 30a Shepperton Road – We accept the adjustments made by Mr Card and the value of £308,000 for this property.
 - 28a Tranmere Close – This property is slightly larger, some 5 square metres but we find that the adjustment of £10,000 for this element is too great. We consider that an allowance of £5,000 is sufficient
9. Taking these adjustments gives an average of £303,500 with the 1% uplift for the freehold value gives a figure of £306,500. We have no quibble with the capitalisation rate of 6.5% nor the Sportelli deferment rate of 5%. We have incorporated these elements in to the valuation which is attached showing the premium payable for the extended lease for the Property to be £6,184.00.

10. As to the lease we have noted the draft at pages 43 to 48 of the bundle provided to us by Judge & Priestley. By and large we accept the red amendments save that we consider the first line of the recital should read “*This Deed is supplemental to a lease (the Lease) dated 30th October 1984...*” Our reason for including the words in brackets is that the use of the word ‘Lease’ by reference to the 1984 document prevails through the draft. The removal of LR13 is appropriate. The ground rent does indeed start at £30 and the suggested wording in respect of the Ground rent provisions is acceptable as is the deletion of the Notice of dealings wording, for the reasons set out in the draft before us.

11. On the question of costs under Rule 13 we have set out below directions. However, we would ask the Applicant to consider the merit of this application. Non-participation would not usually result in an order for costs when the application under s48 would need to be made if there was no agreement on the terms of acquisition. Further, the non-participation of the Respondent has possibly worked in the favour of the Applicant in that no rebuttal evidence was adduced. It is unclear what additional costs may have been incurred as a result of the Respondents non-participation. The Applicant is to confirm with the Tribunal within 14 days whether the claim for costs is to proceed. If the Tribunal is not advised of the Applicant’s intention within that period the case will be closed without further reference.

Directions for an application under Rule 13

1. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).
2. The application is to be determined **without a hearing, unless either party makes a written request (copied to the other party) to be heard before the paper determination.**

The applicant’s case

3. By **10th August 2018** the applicant shall send to the respondent a statement of case setting out:
 - (a) The reasons why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;
 - (b) Any further legal submissions;
 - (c) Full details of the costs being sought, including:
 - A schedule of the work undertaken;

- The time spent;
- The grade of fee earner and his/her hourly rate;
- A copy of the terms of engagement with applicant;
- Supporting invoices for solicitor's fees and disbursements;
- If Counsel was retained - Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
- Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.

The respondent's case

4. By **24th August 2018** the respondent shall send to the applicant a statement in response setting out:
 - (a) The reasons for opposing the application, with any legal submissions;
 - (b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;
 - (c) Details of any relevant documentation relied on with copies attached.

The applicant's reply

5. By **31st August 2018** the applicant shall send to the respondent a short statement in reply.

Documents for the hearing/determination

6. The applicant shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall by **10th September 2018** send one copy to the other party and send **four** [two if paper track] copies to the tribunal.
7. The bundle shall contain copies of:
 - The tribunal's determination in the substantive case to which this application relates;
 - These directions and any subsequent directions;
 - The applicant's statements with all supporting documents;
 - The respondent's statement with all supporting documents.

Determination/hearing arrangements

8. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the **week commencing 24th September 2018**.

9. If an oral hearing is requested, the hearing shall take place on **26th September 2018** at 10 Alfred Place London WC1E 7LR starting at **10:30am** with a time estimate of 1-2 hours.
10. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

Name: Tribunal Judge Dutton **Date:** 24th July 2018

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 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).

**53A, Shepperton Road
Petts Wood
Orpington, BR5 1DL**

Long Lease Value (Unimproved)	£303,500
Freehold Value (Unimproved)	£306,500
Deferment Rate	5%
Capitalisation Rate	6.50%

Freeholder's Present Interest

Term

Term 1		
Rent Reserved	£60	
YP to 23.5 years @ 6.5 %	<u>11.8822</u>	

£712.93

Term 2		
Rent Reserved	£90	
YP 30 years at 6.5 %	13.0587	
PV of £1 in 23.5 years @ 6.5%	<u>0.2277</u>	

£267.61

Term 3		
Rent Reserved	£120	
YP 30 years at 6.5%	13.0587	
PV of £1 in 53.5 @ 6.5%	<u>0.0344</u>	

£53.91

Reversion

FH reversion	£306,500	
PV of £1 in 83.5 years @ 5%	<u>0.017</u>	

£5,211

£6,245

less

Freeholder's Proposed Interest

FH reversion	£306,500	
PV of £1 in 173.5 years @ 5%	<u>0.0002</u>	

£61

£6,184

Premium for lease extension

£6,184