



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

**Case reference** : **LON/IR/LON/00AZ/OLR/2017/1393**

**Property** : **Flat A, 431 New Cross Rd, London SE14 6TA**

**Applicant** : **Laxman Karsan Patel and Savit Laxman Patel**

**Representative** : **Ms Nicola Muir of Tanfield Chambers instructed by Thirsk Winton LLP Solicitors, Woodford Green, Essex**

**Respondent** : **Daljeet Cheema and Jasminder Cheema**

**Representative** : **Mr Carl Brewin of Hardwicke Chambers instructed by Collins Benson Goldhill LLP Solicitors, London, W1**

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

**Tribunal member** : **Mr Charles Norman FRICS (Valuer Chairman)**

**Date of Hearing and venue** : **20 March 2018 at 10 Alfred Place, London WC1E 7LR**

**Date of decision** : **14 June 2018**

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**DECISION**

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**Summary of the Tribunal's decision**

- (1) The appropriate premium payable for the new lease is **£22,799**.
- (2) Amendment to the service charge provisions in the existing lease is refused.
- (3) The demise under the new lease shall exclude an area outside of the flat comprised within the current lease, namely a portion of the common parts staircase at the rear of the building.

**Background**

1. 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 Flat A, 431 New Cross Rd, London SE14 6TA (the "property").
2. By a notice of a claim dated 7 March 2017, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease granted on 15 April 1988 for a term of 99 years from 25 December 1987 at an initial annual ground rent of £50 rising to £100 and ultimately £150 per annum. The applicant proposed to pay a premium of £13,500 for the new lease.
3. On 3 May 2017, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £67,000 for the grant of a new lease.
4. On 13 October 2017, the applicant applied to the Tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

5. The following matters were agreed:
  - (a) The gross internal floor area is 523 square feet;
  - (b) The valuation date: 7 March 2017;
  - (c) Unexpired term: 69.8 years;
  - (d) Ground rent: £50 per annum for 3.8 years rising to £100 per annum for 33 years and £150 per annum for the remaining 33 years;
  - (e) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value; and
  - (f) Deferment rate: 5 %.

## **Matters not agreed**

6. The following matters were not agreed:
  - (a) The “no-Act world” short leasehold (unimproved) value: the applicant contending at the hearing for £274,455 and the respondent contending for £313,024 or £325,429 in the alternative;
  - (b) The freehold (unimproved) value: the applicant contending for £303,030 and the respondent contending for £388,850;
  - (c) Capitalisation of ground rent: the applicant contended for 6% and the respondent for 7% and
  - (d) The premium payable: at the hearing the applicant contended for £18,500 and the respondent for £43,000 or alternatively £37,000.
  - (e) The extent of the demise by reference to the lease plan.
  - (f) The service charge provisions to be included in the new lease.

## **The Hearing**

7. The hearing took place on 20 March 2018. The applicant was represented by Miss Nicola Muir and the respondent by Mr Carl Brewin, both of counsel.
8. The applicant relied upon the expert report and valuation of Mr Richard Murphy MRICS dated 15 March 2018 and the respondent upon the expert report and valuation of Mr Alex Ingram-Hill MRICS dated 19 March 2018.
9. At the request of the Tribunal, counsel provided written closing submissions.
10. The Tribunal that heard this matter is constituted in accordance with paragraphs 3, 5 and 7 of the Senior President of Tribunal’s Practice Statement on the composition of Tribunals in the Property Chamber, dated 15 November 2013. The London Regional Judge is satisfied that it would be impractical or cause undue delay for the original Tribunal members to decide the matter and, accordingly, on 13 June 2018, he determined that this matter should be decided by Mr Charles Norman FRICS, in his capacity as a valuer chair, who has been authorised to chair proceedings sitting alone.

## **The Law**

11. The relevant valuation provisions are set out at schedule 13 of the 1993 Act, as given effect by section 56 of that Act. None of these provisions were in dispute and it is unnecessary for the Tribunal to make detailed reference to them. The terms of the new lease were in dispute and reference is made below to the relevant statutory provisions.

## **Application to Admit further Evidence after close of the Hearing**

12. The respondent's closing submission sought to introduce new evidence, which the Tribunal considered on a *de bene esse* (i.e. provisional) basis. Firstly, the respondent sought to introduce agents' and land registry extracts in respect of transactions upon which the respondents' expert relied to seek to establish the short leasehold value (appendix 8 of his report).
13. The Tribunal refuses that application on the ground that, had the material been admitted, the Tribunal would not anyway have accepted the approach adopted by Mr Ingram-Hill. The remaining material related to Land Registry extracts in relation to two comparables relied upon to establish the extended lease values (appendix 4, Mr Ingram-Hill's report). These comparables (Ground Floor Flat 396 New Cross Road and Flat 1, 416 New Cross Rd) were both referred to in detail in the respondents' experts report. The Tribunal does not therefore consider that any prejudice is suffered by the applicant in admitting this material, which goes only to proving unexpired lease term. To that limited extent only the Tribunal admits the post-hearing evidence.

## **Inspection**

14. Both parties invited the Tribunal to inspect the property. The Tribunal considered this appropriate and an inspection of the property took place on 21 March 2018 together with an external viewing of most of the comparables, in the presence of both experts and Mr Patel who provided access to the subject property.
15. The Tribunal finds that the property comprises a Georgian end of terrace house on lower ground, ground, first and second floors. The building is situated at the North West corner of New Cross Road and Mornington Road. The site is steeply sloping north away from New Cross Road. The property was converted into flats prior to the grant of the subject lease in which the premises were demised from 25 December 1987.
16. The Tribunal noted on its inspection that the property comprises two small double bedrooms and a combined living room with kitchen area. The bathroom (which lacks natural light) was in fair condition with fittings approximately 20 years old with tiled walls and floor. The kitchen area was relatively small but modern with built-in hob and oven (installed within the last ten years) and a tiled floor. There was gas fired central heating, timber flooring and UPVC windows. Those windows to the flank wall to Mornington Road were opaque and barred. The living room was comparatively small. The rear patio area was walled with a concrete surface and a gate to Mornington Road. The Tribunal noted a small area of apparent damp to the rear bedroom wall, but this did not appear very significant. Externally, the Tribunal noted a small lobby area and eight steps up to ground level. The Tribunal noted external gas and electricity meters.

17. The Tribunal observed that Mornington Road included some off-street parking, but this was congested. The Tribunal also noted parking restrictions.
18. The Tribunal's overall impression was that this was a small but modernised flat in good overall condition and with the advantage of an external yard area and with the main disadvantage being the eight external steps down which were in relatively poor condition.
19. New Cross Road in this location is an extremely busy inner city road. The Tribunal agrees with Mr Murphy that there is a wide mixture of building types and uses in the vicinity. The property is very close to New Cross Station.

#### **Direction to Experts to produce a revised lease plan**

20. During its inspection the Tribunal directed both experts to agree a revised lease plan in the event that the Tribunal accepted the respondent's contention the lease plan should be changed. Unfortunately, the experts appear to have misunderstood the direction and the plan is therefore unhelpful.

#### **Chronology of Transactions in the Building**

21. The respondents acquired the existing leases in the three upper flats as follows: second floor, Flat D, on 23 March 2016, price, £173,665, (377 sq. ft.); first floor, Flat C, 5 February 2016, £190,000, (431 sq. ft.); ground floor, Flat B, 5 February 2016, £190,000, (426 sq. ft.) (respondents' floor areas). The freehold was purchased by the respondents on 8 September 2016. The applicants acquired the lease of Flat A on 10 September 2002.

## Expert Evidence

### Mr Murphy

22. Mr Murphy is an experienced chartered surveyor who qualified in 1994, prior to establishing his firm, Richard John Clarke chartered surveyors in 1998. He specialises in enfranchisement valuations and valuations in connection with compulsory purchase. The salient points of Mr Murphy's evidence were as follows:
- i. The locality comprised properties which were heterogeneous owing to conversions, extensions and differing levels of refurbishment.
  - ii. The property was in a basic condition when inspected. The exterior was poor. There was evidence of damp problems. The kitchen and bathroom were modernised but basic. Tenant's improvements included installation of casement style UPVC windows.
  - iii. The ground rent capitalisation rate should be 7% having regard to *Nicholson v Goff* [2007] 1 EGLR 153.
  - iv. In view of the age of the subject property and its condition, comparables should be adjusted by 10% when they are situated in converted houses that are refurbished to a high standard.
  - v. Mr Murphy relied on the derivation of a rate per square foot in respect of the comparable properties and considered that this floor area approach was the most appropriate. Sale prices should be adjusted to reflect the house prices index. Where the comparable is sold with a share of the freehold the value should be reduced by 1%. Where the comparable sold in retail parades, the value should be increased by 5% as such locations are disadvantageous. Where the comparables are located above the first floor the value should be increased by 5%.
  - vi. To calculate the freehold vacant possession value (FVVP), Mr Murphy identified eight comparables sold within 30 months of the valuation date. From these he identified an adjusted average rate per square foot of £531 and applying this rate to the agreed floor area of the subject flat, 523 sq. ft. he derived a value of £277,723. However, he rounded this up to £300,000, because, he said, it "feels more reasonable".
  - vii. As the relative value of long leasehold to freehold was generally accepted to be 99%, he adopted £303,030 as the virtual freehold value of the flat.
  - viii. As to relativity (to assess existing lease value), the sale of the other flats in the property was an unreliable basis as a consequence of the following factors. Firstly, the vendor of the three flats (Courtney Anthony Hooper, deceased) was subject to an administration order in bankruptcy, evidence of which was supplied by Mr Murphy in his report. Secondly, the title included a unilateral notice benefiting the Crown Prosecution Service for £300,000 in security for the settlement of a claim in respect of a tainted gift. The sale could not therefore be assumed to be without compulsion. Further all three flats were purchased at the same time by members of the same family using the same address. The estate agent was based in Northampton and all three flats were tenanted.
  - ix. Therefore, graphs of relativity should be used. The support for this approach was given by the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 622 (LC). Mr Murphy relied upon graphs of relativity set out in the RICS research report (2009). These included five relativity graphs for Greater London in England which showed an average

relativity of 92.42%. Mr Murphy explained the compilation basis for each of the graphs. He also drew the Tribunal's attention to the Beckett and Kaye (mortgage-dependent market, 2014) relativity graph which suggested a relativity of 84%. He stated that having contacted the authors, this was based partly on opinion and partly on sales evidence in the London Borough of Croydon and Brighton. Mr Murphy did not rely on this graph in his analysis. Further, Mr Murphy opined that the Gerald Eve graph which had been accepted by the Upper Tribunal in *Mundy*, should be subject to adjustment because of market changes since it had been compiled. He referred to the approach adopted by the Upper Tribunal on this issue with reference to the Savills 2002 and 2015 graphs. From these he derived a reduction in relativity of 1.91%, which he then applied to the average of the RICS graphs upon which he relied (92.42%). For an unexpired term of 70 years as adjusted this equated to 90.78%. A straight-line adjustment for 69.8 rather than 70 years gave a relativity of 90.57%. This Mr Murphy adopted.

### Mr Ingram-Hill

23. Mr Ingram-Hill is employed by John D Wood as an Associate Director. He is a Professional Member of the Royal Institution of Chartered Surveyors and holds a master's degree in land economy from the University of Cambridge. He has given evidence in both the First-tier Tribunal and Upper Tribunal on numerous occasions. The salient features of Mr Ingram-Hill's evidence were as follows:
  - i. Indexation is inappropriate because except for Flat 1, 429 New Cross Road, the comparable evidence was sufficiently close to the relevant date not to require adjustment. Further, the market in the London Borough of Lewisham has been relatively flat since the middle of 2016.
  - ii. During his evidence, Mr Ingram-Hill made clear that he did not accept value based on a price per square foot and that this should be based on the number of bedrooms.
  - iii. Flat 1, 416 New Cross Road which was sold in July 2017 for £410,000, should be analysed at £706 per square foot. This property is very similar to the subject property and essentially unimproved. It does not have side fenestration. There is a communal garden at the rear with a parking space within the demise. Parking availability in the vicinity is not difficult although Mr Ingram-Hill accepted that car parking spaces had a value. This property is larger than the subject property and the sale justifies a value of £385,000 in respect of Flat A 431 New Cross Road.
  - iv. Flat 1, 429 New Cross Road sold in October 2015 for £420,000. The floor area was 561 sq. ft. This was a newly developed flat forming part of the redevelopment of the adjacent building. It was therefore in new condition and with the benefit of a dog-leg garden. The sale price equates to £748 per square foot or £822 per square foot based on the time adjusted value (£461,142).
  - v. The, Ground Floor Flat, 396 New Cross Road was sold for £350,000 in December 2017 and comprised 523 sq. ft. including a cellar of 58 sq. ft. This equated to a price of £669 per square foot.
  - vi. Flat 7, 319 New Cross Road was sold for £360,000 in December 2017. It comprised 645 sq. ft. which equates to £558 per square foot. Although this property is larger and on the first

floor it is within an unusual building on the side of railway tracks. The flat has very little natural light.

- vii. Mr Ingram-Hill concluded that the value could be not less than that for Flat 7, 390 New Cross Road, at £360,000. The best comparable was Flat 1, 416 New Cross Road. That sale itself justified a value of the subject property at £400,000. However, overall, Mr Ingram-Hill gave his valuation at £385,000. To derive a virtual freehold equivalent, this figure should be increased by 1% giving £388,850.
- viii. As to relativities, Mr Ingram-Hill suggested that transactional evidence should be preferred to evidence derived from graphs of relativity. He referred to the Upper Tribunal decision in *Mallory & Ors v Orchidbase Ltd* [2016] UKUT 468 (LC). In his opinion the sales of the three upper floor flats at 431 New Cross Road were a fair reflection of market value. He referred to a letter from Matthew Gill, of Miller's Estate Agents, in which Mr Gill stated that the properties had been marketed on RightMove, generated hardly any interest, and the prices were dropped to £225,000. There was then an "open house" style viewing but due to the combination of the condition and short lease lengths there were no offers or serious interest. To derive short lease relativity from these transactions, Mr Ingram-Hill needed to assess corresponding freehold values, established from sales of comparable extended lease sales. He opined that it may be necessary to adjust for condition, the tenanted nature of the properties and the bulk nature of the purchase. He did not consider that any further adjustment for the value of the "Act world" rights was needed. He referred to comparable sales at Appendix 8 of his report from which he derived the long leasehold value of £275,000 or £646 per square foot. Adjusted for 1% to reflect freehold values this equated to £277,750. Having made a 5% adjustment for bulk purchase, 10% for condition and 2.5% for the tenanted nature of the property, Mr Ingram-Hill analysed the short leasehold sale price at £225,000 in respect of flat B on the ground floor. Against his freehold value of £277,750, this equated to a relativity of 81%. To adjust for a 69.8 year term, he deducted 0.5% giving a relativity of 80.5%. As to relativity graphs, in his opinion the Gerald Eve graph, although it related to Prime Central London, was the most reliable graph. This gave a relativity of 86.88%. Taking an average of his transactional relativity and the Gerald Eve graph gave a blended relativity of 83.69%. He then produced calculations on both bases to give his valuation opinions.
- ix. As to capitalisation rate, Mr Ingram-Hill adopted 6% because the ground rent had stepped reviews with one close to the valuation date. He considered that this proximity would compress the yield slightly.

#### **Tribunal's decision in relation to the extended lease and virtual freehold value of subject flat**

- 24. The Tribunal finds that it is appropriate to analyse comparables primarily using floor areas, rather than number of bedrooms, although valuation itself is not simply an arithmetical exercise.
- 25. The Tribunal considers that indexation for house price movement using the Lewisham house price index from the Land Registry is appropriate. It considers that this adjustment for time should be applied prior to any other adjustments in respect of each comparable.



26. The Tribunal accepts the respondents' evidence that floor areas stated on energy performance certificates ("EPC") is insufficiently reliable to be used for valuation purposes, as the certificates were not produced for that purpose. Therefore, where there is a conflict in evidence in relation to floor areas, the Tribunal prefers the respondents' expert evidence.
27. The Tribunal agrees with the respondent that there is generally insufficient evidence of the internal condition of most of the comparables to make reliable comparisons with the unimproved condition of the subject property.
28. The Tribunal considers that the best comparable is Flat 1, 416 New Cross Road, which has been relied upon by both parties. This property, which is almost opposite the subject property, is very similar, although adjustments are required in relation to the car parking space and communal share of the garden. The Tribunal considers that based on the property particulars there is sufficient evidence to show that the bathroom has been recently replaced to a high standard and that an adjustment for the bathroom is therefore appropriate. The Tribunal considers that a private car space in the locality is a valuable feature and has assessed the value at £15,000. It has assessed the value of the communal share of the garden £5,000 and made a further allowance of £5,000 in respect of the new bathroom. After first adjusting for time<sup>1</sup> and having carried out these further adjustments it arrives at a sale price of £379,260 in respect of 565 sq. ft. This equates to £671 per square foot.
29. The Tribunal rejects 18B Parkfield because it is much larger and because it accepts that the EPC floor area is unreliable. The Tribunal also rejects the basement, 74 Lewisham Vale for the same reasons. It rejects 120B New Cross Road because it is too small and too far away from the subject property. The Tribunal does not consider that flat 1, 429 New Cross Road is a reliable comparable on the basis that the property was partly reconstructed; in addition, the transaction occurred some 17 months before the valuation date. The Tribunal also rejects 396 New Cross Road as a comparable because that property is immediately adjacent to a very busy main railway line, which is a significant disadvantage.
30. The Tribunal gives some weight to the sale of the first floor, 412B New Cross Road which after time adjustment equates to £539 per sq. ft. The Tribunal notes that the freeholder is the London Borough of Lewisham.
31. The Tribunal does not consider that the flats above retail premises are directly comparable. Accordingly, in view of other better evidence, the Tribunal gives these comparables no weight.
32. The Tribunal gives some weight to the sale of the ground floor flat, Ground floor flat, 396 New Cross Road. However, approximately 10% of floor area is cellar, which in the Tribunal's experience commands a far lower value than the remainder of the property. The Tribunal therefore disagrees with Mr Ingram-Hill's analysis and has ascribed 10% of the ground floor value per sq. ft. to the cellar and made an allowance of 5% in respect of the garden. This equates after time adjustment to a rate of £829 per sq. ft. on an adjusted floor area of 470.8 sq. ft.
33. Applying the above findings, the Tribunal arrives arithmetically at an average rate per square foot of £679 (the average of £671, £539 and £829 per sq. ft). For the subject flat of 523 sq. ft. this gives an arithmetical figure of £354,986.
34. However, as a result of the large cellar at Ground Floor Flat 396 New Cross Road, the remainder of this property is significantly smaller than Flat A 431 New Cross Road, which

<sup>1</sup> HPI index change July to March 2017 is (123.19 - 121.53) / 121.53, being 1.37%

tends to increase the rate per sq. ft. Conversely, the fact that 412B New Cross Road is in a property owned by L.B. Lewisham would tend to depress its value.

35. The Tribunal therefore prefers to place most weight on the sale of Flat 1, 416 New Cross Road which it considers to be the best comparable. For this, it has derived a rate of £671 per sq. ft. (see above) and it therefore adopts a rate of £670 per sq. ft in respect of Flat A 431 New Cross Road. This equates to £350,410, say £350,000 after rounding.
36. The Tribunal accepts the common ground between the experts that an adjustment of 1% should be applied to this figure to ascertain the virtual freehold value of the subject flat. This equates to £353,535.

### **Findings in relation to Relativity**

37. The issue of relativity has been recently considered in *Mundy*. The Upper Tribunal said:
38. “168. Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.  
  
169. Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.”
39. In *Mallory & Ors v Orchidbase Ltd* [2016] UKUT 468 (LC), the Upper Tribunal said, “We endorse and reiterate the Tribunal’s preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation.”
40. The Tribunal rejects the evidence that the sale of Flats B, C and D in 431 New Cross Road is unreliable simply because the vendor was subject to an administration order in bankruptcy.
41. However, in light of *Mundy* and *Mallory* the Tribunal finds that the sale of three upper flats is unreliable evidence of the existing lease value for 431A for the following reasons:
  - i. Paragraph 168 of *Mundy* refers to a sale of the subject flat. In this case the subject flat was not sold on its existing lease close to the valuation date and the previous sale of the lease was in 2002. Accordingly, *Mundy* is not directly applicable.

- ii. The valuation hypothesis is concerned with a sale of the flat, not a group of flats and the sale of a group of flats is therefore not a like for like comparison as this would be expected to attract a bulk discount.
  - iii. There was no clear evidence as to the marketing method employed in relation to the three flats. No agents' sales particulars were included in the trial bundle. The agent was based in Northampton, and this raises a question as to the marketing of the flats and whether they were fully exposed to the market.
  - iv. Mr Ingram-Hill in calculating his relativity adopted a bulk discount of 5%. In the Tribunal's judgment this is too low in respect of the group purchase of three flats. In addition, his relativity calculations are highly sensitive to each of his three variables (see above): a small variation in them would have a large resultant change to the relativity calculation. The Tribunal considers that the range and sensitivities of these adjustments does amount to extensive manipulation as envisaged in *Mallory*.
  - v. The facts in *Mallory* are very different. The comparables in that case were homogeneous flats whereas the comparables in this case are largely disparate.
42. In terms of relativity graphs to which Mr Ingram-Hill placed alternative reliance, the Tribunal does not accept that primary reliance should be placed on the Gerald Eve graph as this is concerned with Prime Central London.
43. For these reasons the Tribunal does not accept that the approaches to relativity adopted by Mr Ingram-Hill are reliable in this case.
44. The Tribunal prefers the approach adopted by Mr Murphy and adopts his relativity of 90.57%.

### **Capitalisation Rate**

45. The Tribunal prefers the 7% adopted by Mr Murphy for the reasons he gave.

### **The Premium**

46. The Tribunal determines the appropriate premium to be **£22,799**. A copy of its valuation calculation is annexed to this decision.

### **Proposed changes to the lease**

47. The respondent submitted that a new lease plan should be adopted to exclude an area occupied by a rear communal staircase which serves the upper floors in the building and to which the subject flat does not have access. Indeed, the subject flat is separated from this area by a solid brick wall. The communal area is not being used by the subject flat.
48. The respondents rely on section 57 (1) (a) of the 1993 Act which provides that "... A lease shall be on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account (a) of the omission from the new lease of property included in the existing lease but not comprised in the flat; (b) of alterations made to the property demised since the grant of the existing lease..." The respondent submitted that either of those two alternatives applied.

49. The respondents also sought to vary the service charge provisions in the lease. Historically the respondent stated that the service charge proportion in respect of Flat A has been 25%. This had been based on rateable values based on the list maintained on 31 March 1990. The respondents claimed that it is not clear how the rateable value method is calculated or assessed with regard to the current configuration of the building; an equal split would be fair and is easier to calculate.
50. The applicants objected to these proposals. They relied on section 57 (6) of the Act which provides that either party "... May require that for the purposes of the new lease any term of the existing lease shall be excluded or modified insofar as (a) it is necessary to do so in order to remedy a defect in the existing lease; or (b) it would be unreasonable in the circumstances to include or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease."
51. Ms Muir submitted that following *Rossman v the Crown Estates Commissioners*, [2015] UKUT 288 (LC) the onus is on the party contending for the change to show the need for the defect to be remedied or for clause to be modified or excluded. She submitted that the respondent has produced no evidence to justify the removal of the staircase area from the applicants' demise. Ms Muir also pointed out that access has been reserved across this area for other leaseholders and that right of support and protection to other parts of the house has also been reserved. She also relied upon *Gordon v Church Commissioners* (Lands Tribunal) (LRA/110/2006) in which a restrictive approach to section 57(6) was adopted. The lease plan was not defective.
52. As to the service charge proposals, the applicant submitted that the amendment sought was not permitted by the Act. This is because there was no necessity to change the manner of calculating service charges. The other leases also provide for the proportions to be calculated by reference to rateable value and a change to this one lease would make the regime unworkable.

### **Tribunal's Findings in relation to the terms of the new lease**

53. The Tribunal accepts the submission of Ms Muir in relation to the service charge. It does not consider that there is any defect in the service charge provisions requiring remedy.
54. In relation to the lease demise, the Tribunal does consider that the plan appended to the existing lease is defective to the extent that the area occupied by the communal stairwell is included within the demise. Having inspected the property, the Tribunal noted that this area is entirely separate from the flat from which it has no access, or use. The Tribunal finds that this falls within section 57 (1) (a).
55. The Tribunal therefore determines that the demise within the new lease shall exclude this area shown hatched black as set out on the plan in the hearing bundle [56]<sup>2</sup>. For the avoidance of doubt the small hatched area on that plan at the front of the property is to be included in the new lease demise.
56. The Tribunal therefore makes the following determinations in relation to the disputed wording set out in the draft lease: clause 1.1, as amended, [49] and clause 3 [50] shall be included; in the schedule [53], paragraph 2 shall be included but paragraphs 1 and 3 omitted.

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<sup>2</sup> Square brackets refer to hearing bundle pagination

**Name:** C Norman FRICS

**Date:** 14 June 2018

**Appendix:** Valuation setting out the Tribunal's calculations

### **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).

# APPENDIX

## IN THE MATTER OF FLAT A 431 NEW CROSS ROAD LONDON SE14 6TA VALUATION BY THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation	07-Mar-2017
Lease expiry date	24-Dec-2086
Unexpired Term / years	69.80
Virtual Freehold Value	£ 353,535
Extended lease value	£ 350,000
Relativity	90.57%
Existing lease value	£ 316,995
Ground rent capitalisation rate	7.00%
Reversionary deferment Rate	5.00%
Premium Payable	£ 22,799

### Diminution of Freeholder's Interest

#### Term 1

Ground rent	£	50.00	per annum		
3.8 Years' Purchase	@	7.00%	3.2387	£	162

#### Term 2

Ground rent	£	100.00	per annum		
33 Years' Purchase	@	7.00%	12.7538		
PV £1 in 3.8 years	@	7.00%	<u>0.7733</u>		
			9.86251	£	986

#### Term 3

Ground rent	£	150.00	per annum		
33 years' purchase	@	7.00%	12.7538		
PV £1 in 36.8 years	@	7.00%	<u>0.08292</u>		
			1.05755	£	159

#### Reversion

value of virtual freehold of flat A	£	353,535			
Present Value of £1 in 69.80 years' time @ 5%		0.0332			
				£	11,737

Less Value of Reversion in 159.8 Years

value of virtual freehold of flat A	£	353,535			
Present Value of £1 in 159.80 years' time @ 5%		0.00041			
				-£	145
				£	12,899

### Calculation of Marriage Value

#### Aggregate value of Proposed Interests

Leaseholder	£	350,000			
Freeholder	£	<u>145</u>			
Total Value of Proposed Interests	£	345,143			

#### Less

#### Aggregate value of Present Interests

Leaseholder	£	316,995			
Freeholder	£	<u>13,044</u>			
	£	330,039			

Marriage Value	£	19,800			
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Divide equally				£	9,900
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Premium					£ 22,799
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