



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

Case Reference : LON/00AC/OLR/2014/1741

Property : 16 St Michael's Close, Torrington Grove,
London, N12 9NB

Applicants : Kasriot Qavolli

Representative : M.M.Patel & Co

Respondent : Raja Patel, Anish Vijay & Others

Representative : R.R.Sanghvi & Co

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Helen Bowers BSc(Econ) MSc MRICS

**Date and venue of
Hearing** : 25 March 2015
10 Alfred Place, London WC1E 7LR

**Appearance for
Applicant** : Ms Hemani Pathirana (Solicitor)

**Appearance for
Respondent** : Jason Mellor (Maunder Taylor)

Date of Decision : 16 April 2015

DECISION

The Tribunal determines that the premium payable by the Applicants in respect of the extension of its lease at 16 St Michael's Close, Torrington Grove, London N12 9NB is £71,282. We have determined that the unimproved freehold value of the subject flat is £306,840 and a relativity rate of 66.88%. Our working calculation is set out in the Appendix.

Introduction

1. This is an application made 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 and the terms for a new lease.

Background

2. The background facts are as follows:
 - (i) The flat: 16 St Michael’s Close, Torrington Grove, London, N12 9NB;
 - (ii) Date of Tenant’s Notice: 15 May 2014;
 - (iii) Valuation Date: 15 May 2014;
 - (iv) Date of Application to the Tribunal: 25 November 2014;
 - (v) Tenant’s leasehold interest:
 - Date of Lease: 15 December 1955;
 - Term of Lease: 99 years from 25 December 1954;
 - Ground Rent: £12.60;
 - (vi) Landlord: Raja Patel, Anish Vijay & Others;
 - (vii) Tenant: Kasriot Qavolli;
 - (viii) Tenant’s Proposed Premium: £60,444;
 - (ix) Landlord’s Proposed Premium: £96,300.

The Hearing

3. The hearing of this application took place on 25 March 2015. The Applicant, tenant, was represented by Ms Hemani Pathirana, Solicitor. She adduced evidence from Mr Russell Shaw, Dip Surv MRICS who is a Consultant with Bellvue Mortlake. The Respondent, landlord, was represented by Mr Jason Mellor who has a Diploma in Surveying Practice and is a Valuation Surveyor employed by Maunder Taylor. Both experts gave evidence and were cross-examined.
4. On 23 February 2015, the parties had agreed the following:
 - (i) The subject flat is a two bedroom first floor maisonette with a GIA of 644 square feet. The flat has a demised garden to the side which fronts onto the road;
 - (ii) Unexpired Term: 39.61 years;
 - (iii) Capital Value of the ground rent: £143;
 - (iv) Deferment Rate: 5%;
 - (v) Uplift from long leasehold to virtual freehold: 1%.
5. There are two issues which we are required to determine:
 - (i) The freehold value of the subject flat. The Applicant contends for £248,359; the Respondent for £304,000.

(ii) The rate to be adopted for relativity. The Applicant contends for 64.60%; the Respondent for 50%.

6. After the hearing, the Tribunal inspected the subject flat and the four comparables. Mr Qavolli was present when we inspected the subject flat. We inspected the comparables externally. We found the inspection to be extremely helpful in assessing the evidence that we had heard about the subject flat, its improvements and the comparables.

Issue 1: The Unimproved Freehold Value of the Subject Flat

7. The subject flat is a two bedroom first floor maisonette with a GIA of 644 square feet. The flat has a demised garden to the side which fronts onto the road.
8. The Tribunal is required to determine the unimproved freehold value of the subject flat reflecting the condition of the flat when the lease was granted in 1954. In considering the comparables, we need to make an adjustment in respect of a number of improvements to the subject flat, namely the installation of double glazed windows and central heating and a refitted kitchen and bathroom. Mr Shaw argues for an adjustment of £15,000; Mr Mellor for £40,000. Mr Mellor recognised that the figure for which he contended was much higher than the adjustment of £10,000 to £15,000 would normally make for such improvements. Further, the higher the adjustment that we make, the less favourable the outcome for the landlord. The Tribunal is satisfied that £15,000 is the appropriate adjustment to make in this case. This adjustment is confirmed by our consideration of the comparable at 9 Glenhurst Road, a flat in an unimproved condition.
9. When the hearing started, we noted that there was no agreement between the experts as to which comparables would be of greatest assistance to the Tribunal. Indeed, there was no common comparable upon which both experts relied. Rather, each party sought to rely on comparables which were most favourable to their respective client:

(i) Mr Shaw, for the tenant, relied on comparables at 9 Glenhurst Road, 23 Cardew Close, 36 The Lindens, 10 Henley House, 14 Henley House, 11 Glenhurst Road and 4 St Michael's Close. When adjusted, these reflected a range of £221,836 to £269,477.

(ii) Mr Mellor, for the landlord, rather relied on 20 Park Court, 26 Cardew Close, 4 Hollycroft, 34 Glenhurst Road and 1 Glenhurst Road. When adjusted, these reflected a range of £283,523 to £328,870, even though he had made a reduction of £40,000 for improvements, rather than £15,000.

10. The Tribunal reminded the experts of their duties to the Tribunal as independent experts. It was not appropriate for them to adopt what appeared to be a partisan position rather than assess the available comparables impartially and objectively. We granted a short adjournment, so that the experts could identify the common comparables that they would address. The experts identified four comparables. They are all two bedroom maisonettes. Two are on the ground and two on the first floor. The experts did not suggest that this would make a material difference. They all seem to be of a similar size.

Table 1: The Agreed Comparables				
	26 Cardew Close	1 Glenhurst Road	9 Glenhurst Road	4 St Michael's Close
Floor	First	Ground	Ground	First
Date of Sale	13.06.14	22.07.14	10.06.14	22.10.12
Lease length	965 yrs	125	124.75	130
Sale Price	£332,500	£346,500	£302,000	£250,000

11. Having viewed the subject flat and the comparables, the Tribunal have agreed to make the following adjustments to the comparables.

Table 2: Adjustments made by the Tribunal				
	26 Cardew Close	1 Glenhurst Road	9 Glenhurst Road	4 St Michael's Close
Sale Price	£332,500	£346,500	£302,000	£250,000
Time	-2.7%	-4.8%	-2.7%	+12.7%

	£323,522	£329,868	£293,846	£281,804
Lease length	0	+1%	+1%	+1%
	£323,522	£333,167	£296,784	£284,622
Condition	- £15k	-£15k	0	-£15k
	£308,522	£318,167	£296,784	£269,622
Disrepair	0	0	+ £5k	0
	£308,522	£318,167	£301,784	£269,622
Location	0	-2.5%	0	0
	£308,522	£310,213	£301,784	£269,622
Unimproved Freehold Value				
	£308,522	£310,213	£301,784	£269,622

26 Cardew Close, N12

12. The Particulars of Sale are at p.139-143 of the Bundle. The property is described as having the benefit of a modern kitchen and bathroom, double glazing and central heating. The sale was one month after the valuation date. The size is similar (625 compared with 644 square feet). Mr Shaw suggested that the location was “shabby” and we should make a 2% adjustment for location. We disagree. Having viewed the property, it is very close to the subject flat and the location is similar. The only significant difference between the experts is the adjustment that we should make for improvements. We have explained our reasons for adopting £15,000. The lease length is 965 years, so we do not make the 1% adjustment to compute the unimproved freehold value.

1 Glenhurst Road, N12

13. The Particulars of Sale are at p.165-169. The property is described as having the benefit of a modern kitchen and bathroom, double glazing and central heating. We therefore make an adjustment of £15,000. We have no particulars of size, but it is likely to be similar to the subject flat having regard to the floor plan at p.169. Mr Shaw suggested that it was larger;

Mr Mellor that it was smaller. Mr Shaw suggested that we should make a 6% adjustment for its better location. It had a larger garden which could potentially be used for off-street parking. It was closer to North Finchley's shopping and transport facilities. It was also suggested that it was in a better catchment area for schools. However, there was no clear evidence on this. Mr Mellor argued that no adjustment should be made for location. Having inspected the property, we make an adjustment of 2.5% in respect of its location. We consider that Mr Shaw has overstated the advantages, but make a modest adjustment for the potential for off-street parking.

9 Glenhurst Road, N12

14. Limited Particulars of Sale are at p.72. This property was sold at auction by order of Mountview Estates plc. Mr Mellor informed us that he had spoken to the Auctioneer. The flat had been occupied by a Rent Act Protected tenant. There had been dated fixtures and fittings. It was in a poor condition and had no gas central heating. We therefore make no adjustment for its condition. This is a particularly helpful comparable as it is the only one without improvements. It is the unimproved freehold value of the subject flat which we are required to determine.
15. The sale was one month after the valuation date. Mr Mellor suggested that we should make a £5,000 adjustment for disrepair. We agree. Mr Shaw suggested that we should make a 6% adjustment for its proximity to the North Finchley High Road. We disagree. Whilst it is marginally closer, the flat is situated in a busier road. These factors would cancel each other out.

4 St Michael's Close

16. This flat is an improved maisonette situated opposite the subject flat. We have no sale particulars. We were told that the sale involved the same freeholder and lessee as in the current case. The sale occurred more than 18 months before the valuation date. On the basis of the Land Registry particulars, a 12.7% adjustment would be justified in respect of time. Mr Shaw suggested that a much smaller adjustment of 2.13% should be made based on an increase in price paid on 1B St Michael's Close between June 2012 and February 2014. He suggested that this was good evidence of a local market. We disagree. Mr Mellor suggested that we should give lease weight to this comparable.
17. At the end of the hearing, we asked the experts to weight the four comparables, giving a greater weighting to those which they considered to be most relevant:

Table 3: Weighting the Comparables

	26 Cardew Close	1 Glenhurst Road	9 Glenhurst Road	4 St Michael's Close
Mr Shaw	33%	10-15%	20-25%	20%
Mr Mellor	20%	20%	50%	10%
Tribunal	33.3%	33.3%	33.3%	0

18. Having made the adjustments to the four comparables, the Tribunal noted that the first three suggested a very similar unimproved freehold value for the subject flat. All the sales were close to the valuation date.
19. 4 St Michael's Close suggested a much lower valuation which is outside the range of the other comparables. We agree with Mr Mellor that this is a much less helpful comparable. The Tribunal has had least information about this property. Its condition at the time of the sale is unknown. On our inspection, we noted that the garden seemed to be less good than that at the subject flat. We have very limited particulars of the sale which took place some 18 months before the valuation date. There was a conflict between the experts as to the adjustment that we should make for time. We have therefore decided to exclude this comparable from our consideration.
20. The Tribunal has concluded that the first three comparables are all of equal relevance. We take an average of the unimproved freehold values of the three relevant comparables and reach a figure of £306,840.

Issue 2: Relativity

Relativity

21. The following guidance on relativity is provided by the learned editors of "Hague on Leasehold Enfranchisement" (6th Ed, 2014) at [33.17]:

"The assessment of the value of the tenant's existing lease is often problematic. Sales of flats in the locality on leases of a comparable unexpired term will invariably be "tainted" by being sold with

1993 Act rights, which have to be disregarded. If there is evidence of sales of flats in the locality on very long leases, valuers can assess the value of the flat on its existing lease by taking a proportion of the long lease value. The relative value of a lease when compared to one held on a very long term varies with the unexpired term. This “relativity” has not proved easy to establish. A number of organisations publish tables or graphs of relativity, representing their views, which views may be based on market transactions, settlements, expert opinion and/or tribunal decisions. This topic was recently considered in detail by the Lands Tribunal (in *Nailrite Ltd v Cadogan* [2009] 2 E.G.L.R. 151). It held that relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity (see *Nailrite Ltd* [2009] 2 EGLR 151 at [228] applying the guidance of the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] R.V.R. 39).”

22. In a footnote, the Editors note:

“In October 2009, the RICS published its report on Graphs of Relativity, in response to the suggestion in *Arrowdell*. The Leasehold Relativities Group, chaired by Jonathan Gaunt QC and comprising eight surveyors, considered all the published graphs but were unable to agree upon definitive graphs to be used as evidence by tribunals as had been proposed by the Lands Tribunal. The report reproduced all the published graphs together with details of the data that lies behind each. In *Re Coolrace Ltd* [2012] UKUT 69 (LC); [2012] 2 E.G.L.R. 69, the Lands Chamber adopted the Lease graph of relativities, based on Tribunal decisions across the country, in preference to a local West Midlands graph, which had been applied by the LVT. A plea for a further attempt to agree a graph was made. In *Trustees of Sloane Stanley Estate v Carey-Morgan* [2011] UKUT 415 (LC); [2012] R.V.R. 92, the Lands Chamber assessed the value of short leases with 4.74 years unexpired by capitalising the unimproved rental value to the end of the term. This was appropriate for such a short lease, instead of using graphs of relativity.

In *Earl Cadogan v Cadogan Square Ltd* [2011] UKUT 154 (LC); [2011] 3 E.G.L.R. 127, the Upper Tribunal was faced with the difficulty of conflicting evidence as between evidence of adjusted transactions (producing a relativity of 53 to 56%) and evidence from graphs (producing a relativity of 38%). An analysis of the evidence from the Savills 2002 enfranchisable graph as against the Gerald Eve non-enfranchisable graph suggested that the adjustment of 10% made by the nominee purchaser to adjust the transactional evidence to reflect 1993 Act rights was too low and the Tribunal decided that a deduction of 25% was appropriate. The unexpired terms in that case were 17.75 years.”

23. A number of recent decisions of the Upper Tribunals have highlighted the problems that First-tier Tribunals have to confront. As was noted most recently by HHJ Huckinson in *Latifa Kosta v F.A.A.Carmwath and Others (47 Phillimore Gardens)* [2014] UKUT 0319 (LC), (at [143]):

“We would conclude by saying that this Tribunal, its predecessor, the LVTs and indeed the profession at large has, unsuccessfully thus far, been seeking to find a settled position on relativities for leasehold properties”.

The Submissions of the Parties

24. Mr Shaw adopted a figure of 64.60% in his report. His starting point was the two graphs produced by Nesbitt and Co (67.61%) and Andrew Pridell Associates Ltd (66.16%). He noted that Mr Nesbitt’s graph is predominantly based on Greater London and outer suburbs, but he largely acted for landlords. Mr Pridell’s graph is predominantly based on the South East and Suburban London based on data where he mainly acted for tenants. The average of these two graphs is 66.88%.
25. Mr Shaw then considered the sale of the existing lease of the subject property with the benefit of the enfranchisement notice which was sold for £167,950 on 22 May 2014, a week after the valuation date. He deducts £15,000 for improvements and a 2.5% discount for the benefit if the Act to compute a “No Act World” unimproved existing lease value of £149,126. Based on his unimproved freehold value of £248,359, this produces a relativity rate of 60.04%.
26. Mr Shaw reached his figure of 64.60% by taking an average of the three figures, namely 67.61%; 66.16% and 60.04%. It was not entirely clear why he had given a 67%/33% weighting to the RICS graphs. However, at the hearing he indicated that he preferred to rely on the RICS graphs, rather than the local transactional evidence.
27. Mr Mellor accepts that the best estimate from the RICS graphs is 66.88%. However, he placed greater emphasis on the local transactional evidence, namely the sale of the subject property on 22 May 2014 for £167,950. He deducts £20,000 for improvements (rather than the £40,000 which he applied to his comparables) and a 7.5% discount to compute a “No Act World” unimproved existing lease value of £136,900. Based on his unimproved freehold value of £304,000, this produces a relativity rate of 45.03%.
28. However, recognising that this figure is so much lower than that produced by the RICS graphs (66.88%), Mr Mellor suggests a figure of 50%. The Tribunal consider that it is significant that Mr Mellor did not consider that the local transactional evidence could stand on its own. It

needed to be adjusted as it fell outside the range that one would have expected from the RICS graphs.

29. Applying our figure of £306,840 as the unimproved freehold value and applying Mr Mellor's deductions, this would give an even lower figure of 44.62%. The Tribunal ask ourselves whether we are able to accept the sale of 22 May 2014 as a market sale. We conclude that we are unable to do so. The Tribunal have been given little information about this transaction. Mr Mellor stated that this was a sale under a power of attorney who must have sought to achieve a market price. We do not accept this. The figure derived is so outside the range of suggested by the RICS graphs as to suggest that is not.
30. The Tribunal therefore conclude that on the basis of the evidence placed before us, the best evidence is the RICS graphs. Both parties are agreed that should we rely on the graphs, we should take the average of the two graphs produced by Nesbitt and Co and Andrew Pridell Associates Ltd. We therefore determine the relativity rate to be 66.88%.

The Tribunal's Decision

31. We make the following determinations on the two issues in dispute:
 - (i) The unimproved freehold value of the subject flat is £306,840;
 - (ii) Relativity is to be taken as 66.88%;
 - (iii) We determine the premium payable to be £71,282. Our working calculation is set out in the Appendix.

Robert Latham
Tribunal Judge

16 April 2015

Appendix 1
16, StMichael's Close
London, N12

Valuation Date	15/05/2014
Deferment Rate	5%
Freehold Value	£306,840
Long Lease Value	£303,772
Relativity	66.88%
Short Lease Value	£205,215

Term

Capitalised ground rent	£143
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£143

Reversion

Freehold value	£306,840
Deferred 39.61 years @ 5.0%	<u>0.1447464</u>

£44,414

less

Freehold value	£306,840
Deferred 129.61 years @ 5.0%	<u>0.00179296</u>

£550

£43,864

£44,007

Marriage value

Proposed	
Long Lease Value	£303,772

less

Existing	
Short Lease Value	£205,215
Landlord's Interest	<u>£44,007</u>

£54,550

50:50 division

£27,275

Total Premium Payable

£27,275

£71,282