



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

Case Reference : NAT/LON/OOAY/OLR/2015/0889

Property : Second Floor Flat, 47 Cameford Court,
London SW2 4LH

Applicant : Yi Kang Sun and Yue Mei Xu (tenant)

Representative : Mr Robert D S Heald FRICS, Chartered
Surveyor

Respondent : Brickfield Properties Limited (landlord)

Representative: : Mr R D Sharp BSc FRICS, Chartered
Surveyor

Type of Application: **For the determination of the premium
payable under section 48**

Tribunal Members : Mrs Sonya O'Sullivan
Mrs Sarah Redmond MRICS

**Date and Venue of
Hearing** : **13 October 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **14 October 2015**

DECISION

Background

Property:	Second Floor Flat, 47 Cameford Court, London SW2 4LH
Date of tenant's notice:	6 October 2014
Date of landlord's counter-notice:	10 December 2014
Valuation date:	Agreed at 15 October 2014
Details of tenant's leasehold interest -	
(i) Date of lease :	25 December 1974
(ii) Ground rent: per annum in December 2040	£150 per annum rising to £300
(iii) Unexpired term at valuation date:	59.061 years
Tenant's proposed premium:	£48,079
Landlord's proposed premium:	£76,062

The application

1. The tribunal has before it an application made under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the "1993 Act") for its determination of the price payable for the grant of a new lease of the flat known as Second Floor Flat, 47 Cameford Court, London SW2 4LH (the "Subject Flat"). The tribunal did not inspect the flat given that all the comparables relied upon were within the block and we had been provided with photographs. In addition there were no issues as to the condition of the flat or any improvements to be taken into account.

The hearing

- 1) The Applicant was represented by Mr Heald, a surveyor, with Mr Sun, the leaseholder, in attendance. The Respondent landlord was represented by Mr Sharp, also a surveyor. At the commencement of the

hearing it was confirmed that the matters remaining in dispute between the parties were the short leasehold value, the existing lease value and relativity.

- 2) We noted that the gross internal area of the Subject Flat had been agreed by the parties at 512 sq ft.
- 3) Both parties relied on expert evidence. For the Applicant, Mr Heald relied upon his report dated 8 October 2015. The Respondent relied upon a report by Mr Sharp dated 8 October 2015. Both experts attended the hearing to give evidence.
- 4) The evidence heard and the Tribunal's decision is set out below. What follows is necessarily a summary of the evidence, the majority being in any event contained in the bundles before the tribunal.

Existing leasehold value

- 5) Mr Heald referred the tribunal to the office copy entries at HM Land Registry which confirmed that the Applicant had purchased the Subject Flat for the sum of £220,000 on 31 October 2014. The benefit of the claim notice served under section 42 of the 1993 Act had been assigned to the Applicant on purchase. It was confirmed that this sale was freely negotiated in the open market. Mr Heald submitted that the price paid should be adopted as the short lease value given that there was no need to make any adjustments in terms of length of lease or date of sale. Mr Heald had also had regard to two other transactions, the sale of Flat 71 on 15 October 2014 and the sale of Flat 52 on 6 January 2015 which had sold for £199,000 and £242,000 respectively. Mr Heald noted that the sale price of the Subject Flat was the average of the other two transactions which he said supported his conclusion that the sale price of £220,000 was the correct figure to be adopted. He had made no deduction for the effects of the 1993 Act as but on cross examination conceded that it would be appropriate to make a deduction of between 1-2%.

- 6) Mr Sharp also took account of the sale of the Subject Flat. He also relied upon the sale of Flat 71 which had sold on 22 May 2014 at £199,000 with the benefit of a section 42 notice. The lease extension premium was settled by consent at £62,000 on 22 May 2014. Mr Sharp took the average of the sale price of the Subject Flat and Flat 71 to produce a figure of £209,500 inclusive of 1993 Act rights. He then went on to make a deduction of 10% to take account of the Act's effect and relied on two decisions of the tribunal in support (tribunal references LON/OOAY/OLR/2012/0320 and LON/OOAZ/OLR/2015/0711). He explained that this deduction was necessary in his view as the 1993 Act rights are valuable given that the 1993 Act confers a right of compulsion, a fixed valuation date, reasonable costs, the tribunal system, the ability to sell a flat with the benefit of a section 42 notice, a fixed share of the marriage value and the ability to deal with the landlord at a time of the tenant's choosing.
- 7) After having made the 10% deduction to reflect the 1993 Act rights he reached a figure of £188,550 for existing lease value.

Existing leasehold value – the tribunal's decision

- 8) Although we consider that the price paid for the Subject Flat is highly relevant we were not of the view that it should be considered in isolation. Although Mr Heald had taken the average of the sale price of Flats 71 and 52 by way of a background check, we noted that the sale of Flat 52 took place in January 2015 some three months after the valuation date and had not been indexed. We therefore did not consider that Mr Heald had demonstrated that the price paid of £220,000 should be used as a base line. We preferred the approach taken by Mr Sharp who took an average of the sale price of the Subject Flat with the same of Flat 71 which had a sale date of October 2014 to reach a figure of £209,500. We agreed that a deduction should be made to reflect the 1993 Act but were not persuaded that it should be as great as 10%. Mr Sharp agreed that the 10% figure

was not absolute. Mr Heald had conceded that a deduction of 1-2% would be appropriate on cross examination. The parties will of course be aware that previous tribunal decisions, although persuasive, are not binding upon us. We considered on the evidence that a deduction of 2% was sufficient to reflect the 1993 Act and concluded that the appropriate figure for the existing lease value was £205,310.

Long lease value

- 9) Both experts relied on transaction evidence.

- 10) Mr Heald relied on Flat 72 which sold on 8 August 2014 at the sum of £316,000. It was said to be virtually identical to the Subject Flat and modernized to a high standard. He also took into account the long lease value contained in the tribunal's determination in respect of 39 Cameford Court (LON/OOAY/OLR/2013/1442) where a long lease value of £199,920 was found by the tribunal at the valuation date of 7 May 2013. He had then applied an increase in value in accordance with the Index Data provided for Lambeth from HM Land Registry between the respective valuation dates to reach a long leasehold value of £283,486 for Flat 39. He then took an average of the sale price of Flat 72 and the adjusted figure in respect of the decision reached in Flat 39 to arrive at a figure of £296,500 which he adopted as his extended lease value.

- 11) Mr Sharp relied on three transactions as follows;
 - i) Flat 3 – this 2 bedroom flat on the first floor sold on 24 January 2014 at £275,000 on a 1993 Act lease. It is slightly larger than the Subject Flat at 530 sq.ft. The adjusted price on the relevant date using the Lambeth index to £336,232;
 - ii) Flat 30 – this 2 bedroom flat on the first floor sold in November 2014 at £292,500 on a 1993 Act lease. It was said to not have been in good condition in 2012. The adjusted price on the relevant date using the Lambeth index is £294,200; and

iii) Flat 72 – this 2 bedroom flat on the second floor sold on 8 August 2014 at £316,000 on a 1993 Act lease. The adjusted price on the relevant date using the Lambeth index is £320,323.

12) The average of the three transactions is £316,918. However it was Mr Sharp's view that Flat 3 is slightly larger than the Subject Flat and slightly historic, Flat 30 may have been a private sale and was sold after he said the market suffered a downturn in October 2014. He therefore "sat back" and weighing those factors adopted a figure of £320,000 to be the appropriate figure for extended lease value.

Long lease value – the tribunal's decision

13) We did not consider that we could place great reliance on Flat 39 relied upon by Mr Heald which had been the subject of a tribunal determination in May 2013. This is because it required a great deal of adjustment to the valuation date which made it less reliable. Similarly we considered that we should not place any weight on Flat 3 relied upon by Mr Sharp as the sale of Flat 3 took place in January 2014 and again requires so much adjustment we consider it unreliable. We therefore preferred the use of Flats 30 and 72 as the best comparables and took an average of the sales after indexation to reach a figure of £307,260 as the long lease value.

Relativity

14) Both experts had different approaches to assessing relativity which they used as a cross-check on their values.

15) Mr Heald relied on the relativity graphs in the RICS Research Paper which gave a range of 80-82%. He submitted it was appropriate to rely on the graphs as they contain market evidence. The graphs relied on were Beckett & Kay, South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell Associates Ltd.

16) Mr Sharp did not think it was appropriate to rely wholly on graphs when he said compelling evidence was provided by the market. He reached a figure for relativity of 58.63% simply by a mathematical exercise and did not have any regard to the graphs at all.

Relativity – the tribunal’s decision

17) We agree with Mr Sharp that where there is good market evidence it should be given greater weight than the various graphs relied upon by valuers and tribunals. We concluded that there is good evidence in this case for both the short and long lease values. In so doing we arrive at a relativity rate of 66.81%. Mr Heald submitted that there must be some correlation between the graphs and the market evidence as there was such a differentiation. Although the figure reached of 66.81% is substantially different from the range of 80-82% derived from the graphs we do not consider it should be adjusted to take into account the graphs given that relativity is simply a function of the relationship between short and long lease value. As we are satisfied with the market evidence it would not be appropriate to make any adjustment to reflect the range in the graphs.

Summary of the Tribunal's Decision

We therefore determined that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 is £61,225 as shown on the attached valuation.

Name: Sonya O’Sullivan

Date: 14th October 2015

VALUATION FOR PREMIUM FOR A NEW LEASE
Leasehold Reform & Urban Development Act 1993
47 Cameford Court, London SW2 4LH

Facts

Lease 99 years commences 25/12/1974
 Ground rent £150 per annum £300 from 2040
 Valuation date 15th October 2014
 Unexpired term 59.061
 GIA 512 sq ft
 Capitalisation rate 6%
 Deferment rate 5%
 Improvements none

Matters determined

Virtual freehold value £310,333
 Existing lease (unimproved) £205,310
 Long lease value (99%) £307,260
 Existing lease relativity as %age of FHVP value 66.12%

Diminution in Value of Freeholder's interest

	£	£	£
Present value of Freeholder's interest			
Ground rent		150	
YP 29.061 years @ 6%		13.0160	1,952
Ground rent		300	
YP 33 years @ 6%		14.2302	
deferred 26.061 years		0.2197	938
Value of term			
Reversion			
Virtual freehold market value unimproved		310,333	
Deferred 59.061 years @ 5%		0.056050	<u>17,394</u>
Freeholder's present interest			20,284
Value of Reversion after extension	310,333		
deferred 149.061 years @ 5%	0.000694	215	

Calculation of Marriage Value

Value of proposed interests:

Landlords' 215
 Tenant's new 149.061 year lease at a peppercorn 307,260 307,475

Less value of existing interests:

Landlords' 20,284
 Tenant's existing lease 205,310 225,594

Marriage Value 81,881

50% marriage value attributed to landlord say 40,940

TOTAL PREMIUM PAYABLE £61,225