



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

Case reference : LON/00AF/OLR/2016/0706

Property : Flat 31, Anerley Court, Anerley Park,
London SE20 8NN

Applicant : Amanda Clayton

Respondent : Brickfield Properties Limited

Type of application : Application for a new lease, pursuant to
the Leasehold Reform, Housing and Urban
Development Act 1993

Tribunal members : Judge Shaw
Mr Richard Shaw FRICS

**Date and venue of
Paper Determination** : 6 September 2016
10 ALFRED PLACE, LONDON WC1E 7LR

Date of Decision : 5 October 2016

DECISION

Introduction

1. This case involves an application for a new lease of 31 Anerley Court, Anerley, Park, London, SE20 8NN. The application was made on the 28th April 2016 and the Directions were made on the 18th May 2016. Whilst there has been agreement between the parties on several issues, they remain apart on the appropriate rate of relativity and the consequent impact on the premium to be paid in this case.

2. The Hearing

The parties were represented before the Tribunal. Mr Richard John Murphy MRICS of Richard John Clarke Chartered Surveyors appeared as advocate and expert for the Applicant, and relied on his report dated, 1st September 2016, as expanded upon in oral evidence. The Respondent was represented by Mr Robin D Sharp BSc FRICS who also prepared a full report for the Tribunal dated 1st September 2016, upon which he relied, together with his oral evidence to the Tribunal.

3. Matters Agreed and Disagreed

The parties agreed that the long leasehold value of the property on the valuation date of 11th September 2015 was £302,700. The Applicant argued that the existing lease, the short lease, had a value of £291,387, whereas the Respondent contended its value was £272,124. The freehold value was agreed at £305,757 and deferment and capitalisation rates were also agreed at 5% and 6%, respectively. The main area of disagreement was on relativity; the Applicant was at 95.3% whereas the Respondent argued for 89%. It should be said that this case involves a remaining lease period of 75.8 years.

4. The crux of the issue therefore between the parties is the correct relativity to be applied, which in turn feeds the existing lease value and ultimately the premium to be paid. It is proposed to summarise the evidence and thereafter to give the Tribunal's conclusion.

5. Evidence for the Applicant

Mr Murphy for the Applicant, took the Tribunal through the familiar cases of Arrowdell, Nailrile, Coolrace and the more recent decision in Sloane Stanley Estate v Mundy. The conclusion he drew from these cases (which was not controversial) was to the effect that, where possible, transactional or market evidence was to be primarily relied upon in reaching the appropriate valuation. Using graph evidence was to be used as check against the transactional evidence, or, as a last resort, exclusively, in the absence of good market evidence. He took the Tribunal to the RICS Research Report produced in 2009, and at paragraph 10.11 of his report set out in tabular form a summary of the relatively rates applicable, as extracted from those graphs for a lease term of 75.8 years. The average of those relativities was 95.3% (which happened to be by coincidence the South East Leasehold graph relativity) and his contention was that in this case there is no good transactional evidence and therefore in accordance with the authorities, the RICS research was to be relied upon, which is what he had done. He made various observations on the strength or otherwise of individual graphs within this research but said that the fairest way was that which had been indicated in the authorities, to take the average.

6. In particular, he referred to the passage in the Coolrace case where it was said that;

"it may be that the production of a composite graph representing, by a single curve, the midpoint of what would be a very substantial body of evidence over a wide area might well be of assistance to valuers and tribunals in cases where reliance upon such information is the only available option."

Using the relativity value thereby produced results in a premium of £10,400 to be paid in this case, which was the position taken on behalf of the Applicant.

7. The Evidence of the Respondent

Mr Sharp for the Respondent accepted as a general principle that the approach using primarily comparable evidence is to be preferred. He told the Tribunal that he starts with the property, and then has to look for market evidence of a useful comparable kind. In the absence of such evidence one would be driven to reliance on some other form of evidence. He told the Tribunal that there is now a paucity of market evidence because of the fear of leaseholders in retaining short leases. Generally, although not always, parties would endeavour to extend their leases before selling.

8. Mr Sharp then went on to argue, that in this case there were good reasons not to place heavy reliance upon the RICS research graphs. His main reasons were:

(a) he said he had found two sales which did indeed provide good comparable evidence. These sales are referred to at paragraphs 6.4 and 6.5 of his report. They are both sales of maisonettes in Alberta Avenue, SM1 2LQ in the area of Cheam in South London. The first involved the sale of a lease with 79.73 years remaining which was purchased with the benefit of a Section 42 notice for £280,000 in June 2016 (the valuation date in the present case being September 2015). After making an adjustment for the Act rights he produced a valuation of £266,000 for the statutory valuation.

The second sale involved an identical flat, number 5, which was sold in March 2016 for £281,500 which in June 2016 after applying the index would have been £293,690. After adjusting for the ground rent, a value of £295,105 is produced. Doing the comparison for relativity purposes produced a figure of 89.22% for the unexpired term, which Mr Sharp observed is not very different from the Beckett and Kaye graph line of 89% for 75.8 years, albeit very different from the other graphs in the RICS Research Report.

Mr Sharp urged the tribunal to place significant reliance on these two sales.

(b) Secondly, Mr Sharp made the fairly radical submission that the RICS research document was effectively, if not completely, redundant now (or

nearly so). He said this because, as understood by the Tribunal, firstly the research upon which it was based preceded the market crash in 2008/9. Secondly, mortgage availability in the current market is very different from the heady days of 100% mortgages, or sometimes even more, preceding the crash, and thirdly he told the Tribunal, that his own experience in agreeing settlements in cases of this kind, was all to the effect that lower relativities are now being applied by comparison with those suggested in the research document.

9. Mr Murphy in response rejected these propositions. He said that his own experience over many years and certainly in current times, was not that relativity was lower than suggested in the graphs; sometimes it was, but sometimes it was not, and there was no real consistent pattern. Secondly, he said that what had been put forward was not really proper compelling evidence of the kind that should drive the Tribunal to the conclusion that relativity rates had now dropped. Thirdly, and perhaps overlapping with the previous reason, he argued that the two transactions of these maisonettes in Cheam, fell well short of the kind of weight of evidence that would be necessary in order to jettison the RICS research, or at any rate to give them preference over that research.

10. The Determination of the Tribunal

The Tribunal agrees with the reasoning put forward by Mr Murphy for not abandoning the RICS research document, and the evidence of the graphs contained therein. Moreover:

- (1) Both parties were agreed that location is important in respect of the comparables, and although due credit is to be given to Mr Sharp for having done the best he possibly could in looking for some transactional evidence, these two sales are of properties some 12 to 15 miles away, albeit in South London, nonetheless in a different area in South London. The Tribunal did not think it was sufficient as advocated by Mr Sharp to gloss over this fact on the basis that they are "*other south suburban sales*". The research document and guidance of the RICS both make it clear that locality is a relevant criterion in these cases.
- (2) Secondly these two properties sales show one sale only in respect of each maisonette. In order to build up a body of evidence sufficient to push to one side the graph evidence, the Tribunal considers that two or more sales in the chain of disposal of the properties would be necessary in order to give a proper picture or pattern from which to derive a relativity so different from those in the graphs. There could be many imponderables or unknowns relating to these two transactions, very close to each other, which may have had an impact on these isolated sales.
- (3) Thirdly, there is no clear evidence before the Tribunal, on the balance of probabilities, to conclude that relativities in the current market are indeed lower than those produced by application of the graphs. It is true that Mr Sharp gave evidence to this effect, and produced some examples, but Mr

Murphy gave evidence to the opposite effect, and the Tribunal was not satisfied on the evidence before it, that a conclusion of the kind argued for on behalf of the Respondent could be made.

11. Conclusion

For the reasons indicated above, the determination of the Tribunal is that on the evidence before it, it prefers the evidence of the Applicant to that of the Respondent, and finds the appropriate relativity is 95.3% resulting in a premium to be paid of £10,400, in accordance of the valuation appended to the Applicant's report, which appears at page 107 of the Applicant's bundle. This valuation is adopted by the Tribunal, and attached to this Decision.

Judge Shaw
5th October 2016



WITHOUT PREJUDICE

Leasehold Reform, Housing & Urban Development Act 1993 (as amended)

31, Anerley Court, Anerley Park, London, SE20 8NN

Lease Start Date	24 June 1992	GR Capitalisation Rate	6.00%
Term	99 years	Deferment Rate	5.00%
Valuation Date	11 September 2015	Ground Rent:	£75 p.a. for 9.79 years
Unexpired Term	75.79 years		£150 p.a. for 33 years
Freehold value	£305,758		£300 p.a. for 33 years
Long Lease Value (99%)	£302,700		
Short Lease value	£291,387		
Relativity	95.30%		

1) Diminution of Landlord's reversion:

Term 1

Ground rent	£75.00	
YP for 9.79 years @ 6%	7.24551	£543

Term 2

Ground rent	£150.00	
YP for 33 years @ 6%, deferred 9.79 years	8.04392	£1,207

Term 3

Ground rent	£300.00	
YP for 33 years @ 6%, deferred 42.79 years	1.17591	£353

Reversion 1

Freehold value of flat	£305,758	
PV £1 in 75.79 years @ 5%	0.024778	£7,576

Reversion 2

Freehold value of flat	£305,758	
PV £1 in 165.79 years @ 5%	0.000307	£94

Diminution of Landlord's reversion: **£9,585**

2) Freeholder's Share of Marriage Value

Long leasehold value of flat		£302,700
Short lease value	£291,387	
Value of landlord's current interest	<u>£9,585</u>	
		<u>£300,972</u>
Marriage Value		£1,728
Freeholders share @ 50%		£864

Enfranchisement price **£10,449**

Say **£10,400**

1.07