



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

Case Reference : LON/00AP/OLR/2016/0165

Property : 61B, Lordsmead Road, London N17
6EX

Applicant : Mr Joshua Lee Kravitz

Representative : Mr James Mellor DipSurvPrac
MRICS Valuer

Respondent : High Cross Estates Limited

Representative : Mr James Fieldsend Counsel

Type of Application : Section 48 Leasehold Reform,
Housing and Urban Development
Act 1993 – determination of terms
of acquisition in dispute and costs

Tribunal Members : Judge John Hewitt
Mrs Helen Bowers MSc MRICS
BSc(Econ)

**Date and venue of
Hearing** : 25 May 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 1 July 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 the premium payable by the applicant to the respondent for the new lease is £14,600; and
 - 1.2 the costs payable by the applicant to the respondent by virtue of section 60 of the Act are:

1.2.1	Valuation fees	£1,875.60
1.2.2	Legal costs	£2,097.00
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant holds a long lease of the subject property, which is a 1-bed first floor conversion apartment of about 600 sq ft in a building originally constructed as a house in late Victorian/early Edwardian times in the heart of the London N17 post code in North London and without the benefit of any outside space.

The respondent has been the freeholder since 1999 [41] and thus is the reversioner for the purposes of section 9 of the Act.
4. The long lease is dated 27 October 1989 [7] and granted a term of 99 from 24 June 1989.
5. The applicant gave to the respondent a notice of claim to exercise the right to a new lease [51]. The notice proposed a premium of £11,000.
6. The respondent gave a counter-notice in which it was admitted that on the relevant date the applicant had the right to a new lease. The respondent did not accept the applicant's proposed premium and counter-proposed a premium of £34,100 [56].
7. The parties were not able to agree all of the terms of acquisition. The applicant made an application to the tribunal pursuant to section 48 of the Act for the terms of acquisition in dispute to be determined by the tribunal. The application is dated 22 January 2016 [4]. Directions were duly given and the hearing of the application was scheduled for 24 and/or 25 May 2016.

The hearing and the issues in dispute

8. In the event the application came on to be heard on 25 May 2016.

The applicant was represented by Mr James Mellor who was also his expert valuer and who gave oral expert evidence.

The respondent was represented by Mr James Fieldsend of counsel. He called Mr Andrew Georgiou BSc(Hons) PGDipSurv MRICS who gave oral expert evidence.

9. In the event the only issue in dispute between the expert valuers was the short lease value of the flat as at the valuation date of 3 July 2015.

Mr Mellor put that value at £265,050 which gave rise to a premium of £14,600.

Mr Georgiou put that value at £220,000 which gave rise to a premium of £37,107.

The written reports of experts before us were as follows:

Mr Mellor:	Report	9 May 2016
	Addendum	17 May 2016
	Addendum 2	23 May 2016
Mr Georgiou	Report	10 May 2016
	Addendum	16 May 2016
	Addendum 2	23 May 2016

10. The parties were also in dispute as to the amount of statutory costs payable pursuant to section 60 of the Act.

The valuation issues

11. As mentioned most of the component parts of the valuation exercise had been agreed between the parties, those included that the freehold value of the flat was £285,000 and that the long leasehold value was 1.00% less, namely £282,150.
12. It was not in dispute that:
- 12.1 The applicant acquired the short lease by a transfer dated 31 October 2011 at a price of £135,000; and
 - 12.2 At that time the applicant was the vendor's estate agent or was in some manner connected with that estate agency.

Mr Mellor's approach

13. The approach taken by Mr Mellor for the applicant was to take a relativity of 93% of the freehold value of the flat to arrive at a short lease value of £265,050 as at the agreed valuation date of 3 July 2015.
14. Mr Mellor relies to some extent on the well-known graphs of South East Leasehold, Nesbit and Co and Andrew Pridell Associates. He considered Beckett & Kay and Austin Gray as not being relevant in this case accepting that both have their limitations and short comings. The graphs mentioned are appended to the RICS Research Report dated October 2009. Mr Mellor also relied upon a graph published by Moss

Kaye which acts for Freshwater and thus covers large parts of suburban London which he considered to provide some assistance, although again he treated it with some caution because it is comprised of settlement evidence and is thus open to criticism.

15. Mr Mellor rejected those graphs which are based on Prime Central London (PCL) data because, in his view the subject property could not properly and reasonably be compared with PCL.
16. Having made an assessment of the graphs Mr Mellor said the he stood back and checked his own settlements (acting for landlord and tenants fairly evenly) achieved in and around suburban London and satisfied himself that a relativity of 93% was a broad average and was realistic.
17. In a close cross-examination Mr Mellor was asked about the substantial increase in the value of the flat from £135,000 in October 2011 to his £265,050 as at 3 July 2015, close to a 100% increase. Mr Mellor accepted that increase was much greater than the general increase in the Land Registry index for Hillingdon LB over that period.
18. Mr Mellor said that he did not have instructions on the exact circumstances of the purchase by the applicant in 2011. He accepted that generally an estate agent who buys a property from a client has a duty to pay market price. Mr Mellor did not know if the vendor required a quick sale and thus was prepared to take a discount for that reason.
19. Mr Mellor speculated that one of the reasons for the significant increase might be connected with the Tottenham (and London wide) riots which took place in August 2011. The subject property is located close to the Broadwater Farm Estate which has had a notorious reputation since the 1970's.
20. Mr Mellor considered that it was unrealistic to take the October 2011 sale and adjust for time using the Land Registry indices. He said that simply too long a time period. Moreover, he said that the Land Registry indices cover the whole of the Hillingdon LB which includes some quite smart, fashionable and expensive areas, such as Crouch End and Muswell Hill as well as impoverished areas such a Broadwater Farm and the market acts differently in those different types of areas.
21. Mr Mellor acknowledged that to an extent there was something irrational in the figures and although he has thought long and hard about it he not been able to put his finger on the reason for it.

Mr Georgiou's approach

22. Mr Georgiou said there were some difficulties in obtaining access to the property for valuation purposes and that his first valuation for counter-notice purposes was prepared without the benefit of access.

23. In his first report Mr Georgiou was only able to find one transaction – 37a Lordsmead Road which sold in March 2015 for £250,000 in March 2015 which when adjusted for time to July 2015 equated to a value of £264,614. However, that was a 1 bed flat on two floors with a GIA of 743, so quite a bit larger than the subject flat. Having made a number of adjustments he arrived at a value for statutory purposes of £259,000. Against his then freehold value of £310,000 that gave rise to a relativity of 83.5%. (Later Mr Georgiou withdrew this comparable as he found out that it was sold with a share of the freehold and thus was not a short lease transaction)
24. Mr Georgiou did not consider one market transaction to be sufficient to produce a reliable result. He therefore also took a look at the graphs.
25. First, as he said was natural, he looked at the section 2 graphs – Greater London and England, he dismissed the Becket and Kay graph on the basis that in *Nailrile* the Upper Tribunal deemed it to be unsound. In applying the remaining graphs he came to an average relativity of 94.1%. That would produce a short lease value of £291,710, with the result, in his view, that the marriage value released would only produce to the tenant a value of £1,212. That sum is less than the section 60 costs payable and he considered it unrealistic, he therefor eschewed that approach.
26. Mr Georgiou then looked at the PCL graphs. They gave an average relativity of 88.4%. He also looked as Savill’s 2002 graph based on flats and houses which covered ten specified areas of central London, which gave a relativity of 90.1% partly explained by the added value of rights.
27. From the mix of this data Mr Georgiou came the following conclusions:
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|------------------|-------|
| Short lease sale | 83.5% |
| PCL Graphs | 88.4% |
| Logical approach | 85.8% |
- He adopted an average of those to arrive at 87.25%
28. In his first addendum to his report Mr Georgiou said that he had considered the decision in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC) dated 10 May 2016.
29. Mr Georgiou further explains his approach to valuation of rights under the Act and the application of the graphs.
30. In his second addendum to his report Mr Georgiou develops his thinking about the approach to adopt in the light of *Mundy*. By this time Mr Mellor and Mr Georgiou had agreed the freehold value of the flat at £285,000 and the long lease value at £282,150. Mr Georgiou explains his reviewed approach with regard to the value with of the subject flat with rights. He considers the sale of the subject flat in 2011

and makes various adjustments to arrive a value at 3 July 2011 with rights of £220,304.

31. As regards valuation without rights. He says that following *Mundy* he looked at three methods:
1. to derive a value for the current lease with rights from any market evidence and to make a deduction for rights;
 2. to get straight to a value without rights from a graph of opinion; and
 3. to derive a value for the current lease with rights by applying a graph of relativity and to make a deduction for rights.
32. His starting point was to look at Savill's 2002 graph with rights which shows 90.1%. he concluded that a relativity without rights could not be higher than that.
33. Next was the average of the Section 1 graphs in the RICS Research Report (PCL). That came out at 88.4% and from that he concluded that the value of the rights might be 1.71% of the long leasehold value and 1.89% of the freehold value but he adopts a value of 2% of the long leasehold value with rights.
34. The application of the three methods mentioned above produces:
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|----------|----------|
| Method 1 | £215,900 |
| Method 2 | £251,940 |
| Method 3 | £251,675 |
35. Mr Georgiou then reviewed the three methods.
36. As to method 1 he acknowledges that he made a large adjustment for time but he considered the Land Registry data to be robust, and he also adjusted for condition, which he considered to be good valuation practice.
37. As to method 2 Mr Georgiou acknowledged that adopting PCL graphs for a property in Tottenham "*is inevitably flawed to some extent*" and he concluded this method was less robust than method 1.
38. As to method 3 Mr Georgiou considered this to be somewhat circular, but it gives a similar result to method 2.
39. Mr Georgiou concludes that he should prefer method 1, a market based method. But with a nod to the other two methods, and he adopts a short lease value of £220,000.
40. In cross-examination Mr Georgiou said that it was only after reading *Mundy* that he appreciated he ought to place reliance on the 2011 transaction. He accepted that in paragraph 168 of that decision the point was made that where there was no reliable market evidence of the value with rights "*at or near the valuation date*" valuers will need to

consider adopting more than one approach, and that one of those may be using the most reliable graph.

41. Mr Georgiou also accepted that relativity can change over a period such as October 2011 to July 2015.
42. Mr Georgiou also accepted that ideally market transactions as close the valuation date are the most helpful but there have been occasions in the past when he has relied upon a four years old transaction adjusted for time.

Discussion

43. What is curious about this case is that both methods adopted by the respective valuers produces an illogical result. In some senses it can be said that nothing seems right.
44. We are wary of the 2011 transaction adjusted for time because the period of adjustment is four years. In our judgment that is too long a period to produce a reliable figure. We note that Mr Mellor has not adopted that transaction for that reason. We also bear in mind that the adjustment for time is based on the Land Registry data which covers the whole borough and thus is abroad average of what has gone on within the borough. It does not necessarily reflect that actual movements of the market within the different types of areas within the borough. For this reason, the greater the time adjustment the less reliable it actually reflects the movement of the market in the discrete areas within the borough.

We consider that adjustments for time in excess of two years are not generally reliable or of much assistance.

45. There is no evidence before us as to the exact nature of the October 2011 purchase and the circumstances of the vendor who plainly agreed to sell at £135,000, the property having been put on the market in August 2011 with an asking price of £139,500. There is no suggestion before us that that was a shady transaction. It is axiomatic that a vendor will be subject to a range of priorities, pressures and personal circumstances all or any of which may have an impact to sell at a certain time at the best price then available in the light of the offers on the table before him or her.
46. We are also wary of applying PCL graphs to a property in Tottenham. In our experience the two markets are so diverse with different drivers that operate in different ways such that they cannot properly be compared with one another.
47. In broad terms we prefer the approach adopted by Mr Mellor. We acknowledge that that produces quite an increase in value since the applicant acquired the property. That may well be due in part to the riots in the area in the summer of 2011 compounded by the reputation of the Broadwater Farm estate. We are conscious of the Hillingdon LB

Land Registry index but we take the point that it covers the whole of a quite a diverse borough. The market within the borough will inevitably operate in markedly different ways so that the data just shows a broad average of what has gone on.

48. We accept that the outcome of Mr Mellor's approach is that it does not produce much profit for the lessee but we can understand that a prudent lessee with a wasting asset might well consider it a sensible course to adopt on its own and that in the event of the lessee wishing to sell the fact of the extended term may be a positive selling point.
49. We are reinforced in our conclusion because the approach adopted by Mr Georgiou produces a relativity of just over 77% which is so out of line with any of the graphs that it must be open to serious question.
50. For the above reasons we determine that the premium payable by the applicant to the respondent for the new lease is £14,600.

Section 60 costs

51. There was no dispute between the parties as to the basis on which costs are payable.

Valuation costs

52. Disbursements of £63 were not in dispute.
53. The valuation costs have been based on a charge-out rate of £250 and that was not in dispute. What was in dispute was the number of hours reasonably and properly incurred. The respondent claimed 7 and Mr Mellor submitted a maximum of 4.
54. Having considered the rival arguments we find that it was not reasonable to incur more than 6 hours on the valuation.

Thus we determine that the valuation costs payable are as follows:

6 hours at £250	=	£1,500.00
Disbursements		<u>£ 63.00</u>
		£1,563.00
VAT at 20%		<u>£ 312.60</u>
Total		£1,875.60

Legal costs

55. These are claimed at £2,190 + VAT based on a charge-out rate of £295 for the most part and a rate of £350 from early May 2016. A detailed breakdown of the time spent was attached to an email dated 23 May 2016 sent to Mr Fieldsend, copies of which he handed to us.
56. Mr Mellor was content to leave it to the tribunal to determine the amount payable.

57. We are satisfied that it was reasonable for the respondent to instruct Potheary Witham Weld having been a long standing client of that firm and its predecessor. We are also satisfied that the charge-out rates claimed are reasonable and well within the range to be expected for this type of specialist work. Broadly speaking the time claimed for is within the range of what a respondent landlord might agree to pay for if he was bearing the costs himself. But we note that time has been claimed for letters in. In our experience it is unusual for a client to agree to pay for such letters; the time incurred in being reflected in other ways. There is no express evidence before us that the respondent did actually and contractually agree to pay for such correspondence and what the reasoning behind it was. In the absence of any compelling reason for doing so, we find that those costs were not reasonably incurred. We have, therefore, made adjustments to the time claimed.

Thus we determine that the legal costs payable are as follows:

Solicitors' costs	£1,747.50
VAT at 20%	<u>£ 349.50</u>
Total	£2,097.00

Judge John Hewitt
1 July 2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.