



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

Case reference	:	LON/00AZ/OLR/2018/0053
Property	:	Flat C, The Elms, Elm Lane, London, SE6 4LB
Applicant	:	Mr J R Hickey
Representative	:	Mr Morgan, FRICS MCI Arb
Respondent	:	The Elms SE6 (Freehold) Co Ltd
Representative	:	Mr Martin, BSc (Est Man) FRICS FNAEA
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge I Mohabir Mr L Jarero, BSc FRICS
Date of determination and venue	:	1 May 2018 10 Alfred Place, London WC1E 7LR
Date of decision	:	3 May 2018

DECISION

Background

1. This is an application made by the Applicant qualifying tenants 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 C, The Elms, Elm Lane, London, SE6 4LB (the "property").

2. By a notice of a claim dated 20 June 2017, served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease of the property and proposed to pay a premium of £8,300.
3. On 30 August 2017, the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £66,240.
4. On 5 January 2018, the Applicant applied to the Tribunal for a determination of the premium and terms of acquisition.

The Issues

Matters Agreed

5. These are set out in the Statement of Agreed Facts annexed hereto.

Matters Not Agreed

6. The only issues not agreed were the existing lease value and the relativity rate.
7. Neither party asked the Tribunal to inspect the property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.
8. The Applicant relied upon the expert report and valuation of Mr Morgan, FRICS MCI Arb dated 9 April 2018 and the Respondent relied upon the expert report and valuation of Mr Martin, BSc (Est Man) FRICS FNAEA dated 17 April 2018.

Decision

9. The hearing in this case took place on 1 May 2018. The Applicant and Respondent were represented by Mr Morgan and Mr Martin respectively.

Short Lease Value & Relativity Rate

10. It was common ground between the parties that the correct valuation approach under the Act to be taken by the Tribunal was, firstly, to look at evidence in the real market¹ and, secondly, to graphs of relativity where the market evidence provided was insufficient.

¹ See *Sloane Stanley Estate v Mundy* [2016] UKUT 0233 (LC) at para. 17

11. The market evidence provided by Mr Morgan in his report was limited to the sale of flats and lease extension transactions at Andace Park Gardens, Widmore Road, Bromley, BR1 3DH ("Andace Park").
12. Mr Morgan looked at the sale prices for 1 bedroom flats where the leases had been extended. This produced an average sale price of £249,618, which he uplifted by 1% to reach an average freehold value of £252,140. He then carried out the same calculation in relation to the unextended lease for Flats 18, 51 and 55 at Andace Park to produce an average sale price of £240,259 with a relativity of 93% for 69 Years unexpired.
13. Mr Morgan also repeated the calculation for various 2 bedroom flats at Andance Park. This produced an average of £347,198 for extended leases, a freehold value of £350,705, an average of £339,524 for unextended leases resulting in a relativity of £96.8 for an average of 70.3 years unexpired.
14. Therefore, he submitted that the relativity for Andance Park lay somewhere between 96.8% and 93% for 70.3 years unexpired. However, the present lease had 74.08 years unexpired.
15. In the Upper Tribunal decision concerning Flat 5, Andace Park, a deduction of 3.5% was made for "No Act World" rights and arrived at a relativity of 88% for an unexpired term of 69.33. Without such a deduction, the relativity rate would be 91.5%.
16. To decide what should be added to reflect the additional 5 year term for the subject property, Mr Morgan used the Savills Unenfranchisable graph and the practitioners' graphs for non-PCL properties. This provided a difference of 2.57% or 0.5% pa. for the different unexpired terms. Applying this rate for the additional term of years resulted in a relativity of 94%. Mr Morgan then went on to deduct 2% for rights under the Act by reference to the differential between the Savills graphs for enfranchisable and unenfranchisable properties to contend for a relativity rate of 92%. He said that the many settlements he had negotiated supported this figure.
17. In the Tribunal's judgement, Mr Morgan's evidence, taken at its highest, did no more than supported a relativity rate of 92% for a single property in Bromley. Even if it was correct, it would have been helpful (even as a cross check) to have had evidence of relativity rates in Catford or Lewisham. Therefore, the Tribunal concluded that Mr Morgan's evidence was of limited assistance in this case.
18. In contrast, Mr Martin provided a detailed valuation report that was supported by the relevant supplementary documents. It contained a detailed analysis of various market transactions of existing and long lease sales to support his general proposition that relativity rates in the "real world" are in fact much lower than the rates set out in the 2009 RICS Graphs of Relativity.

19. As a proposition, the Tribunal considered that it had merit based on the transactional evidence Mr Martin had provided. However, it appears to be limited to short leases in the investment market. The reduced relativity rates may be as a consequence, for example, of such properties being cash purchases as a result the short unexpired terms making them largely unmortgageable. Similar considerations would not apply to the long lease or freehold values. Inevitably, this will have an effect on short lease values and, therefore, the relativity rate.
20. As to market evidence, Mr Martin submitted that the subject property was the best evidence of this. The Tribunal agreed with this submission. To the sale price of £176,000 at January 2017, Mr Martin added a notional 5% or £8,800 for the overall £26,000 spent by the purchaser in carrying out works to the property.
21. Mr Morgan said that the property had been purchased by his client as an investment. Therefore, if the works carried out represented added value or profit to his client, then the figure of 5% used by Mr Martin to represent this together with risk and finance was too low. Most investors work on a notional 10% return and in the absence of any other evidence, the Tribunal adopted this figure. Applying this rate to the purchase price resulted in a short lease value of £193,600 as at January 2015.
22. The Tribunal agreed with Mr Martin's adjustment for time using Land Registry Index for Lewisham at 120.2/100 to give an adjusted figure of £232,707.
23. The Tribunal also accepted Mr Martin's second adjustment for the fact that at the valuation date the lease was reduced by 2.45 years, which amounted to 0.8%. This figure refers to the lease of the property and not to the comparison with Andace Park in Mr Morgan's report. This results in an existing lease value of £230,845.
25. A further deduction has to be made for the "No Act World" rights. On this point, the Tribunal preferred the evidence of Mr Morgan. The Tribunal considered the deduction by reference to the Savills 2015 graph between enfranchisable and unenfranchisable properties with a lease of 74.08 was appropriate. The provided a figure of 2.17%, but is rounded down to 2%.
26. Therefore, the Tribunal found that the adjusted lease value as at the valuation date is £226,228 with a relativity of 82.7%.
27. The tribunal determines the appropriate premium to be **£27,293**. A copy of its valuation calculation is annexed to this decision.

Name: Judge I Mohabir

Date: 3 May 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).

First Tier Tribunal (Property Chamber)

Appendix A

Ref: MR/LON/00AZ/OLR/2018/0053

Valuation of Flat C The Elms, Elm Lane, London SE6 4LB

Valuation Date	20 June 2017
Lease granted for 99 years from 23 July 1992	
Unexpired term	74.08 years
Ground rent	£100 pa until 2025 £200 until 2058 £400 for the remainder
Unimproved vacant freehold value	£273,600
Extended lease value	£270,900
Capitalisation rate	6.5%
Deferment rate	5%
Value of existing lease	£226,228
Relativity	82.7%

Valuation of Freeholder's current interest

Ground rent - 1st period	£100		
YP 8.08 years @ 6.5%	6.1355	£614	
Ground rent - 2nd period	£200		
YP 33 years @ 6.5%	13.4591		
Deferred 8.08 yrs @ 6.5%	0.6012	£1,618	
Ground rent - 3rd period	£400		
YP 33 years @ 6.5%	13.4591		
Deferred 41.08 yrs @ 6.5%	0.07525	£405	
Reversion to freehold value	£273,600		
Deferred 74.08 yrs @ 5%	0.026934	<u>£7,369</u>	
Freeholder's current value			£10,006

Value after grant of extended lease

Reversion to freehold	£273,600		
Deferred 164.08 yrs @ 5%	0.0003336	<u>£91</u>	

Diminution in freeholder's interest £9,915

Marriage Value

Value after enfranchisement			
Freeholders interest	£91		
Tenant's interest	<u>£270,900</u>	£270,991	
Value before enfranchisement			
Freeholders interest from above	£10,006		
Tenant's interest	<u>£226,228</u>	<u>£236,234</u>	
Marriage value		£34,757	
Divide equally between parties			<u>£17,378</u>

Premium payable to freeholder £27,293