



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

Case reference	:	LON/00BF/OLR/2017/0963
Property	:	25, The Maisonettes, Alberta Avenue, Cheam SM1 2LQ
Applicant	:	Rabisankur Purahoo
Representative	:	David Nesbit MSc MRICS of Resolution Property Surveyors
Respondent	:	Brickfield Properties Limited
Representative	:	Gemma de Cordova, counsel, and Robin Sharp BSc FRICS
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Timothy Powell Mrs Helen Gyselynck BSc MRICS
Date of determination and venue	:	16 and 17 January 2018 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	22 February 2018
Date of revision	:	8 March 2018

Revised DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable to the competent landlord for the new lease is ~~£49,144~~ **£49,120**

Background

1. This is an application made by the applicant leaseholder 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 25, The Maisonettes, Alberta Avenue, Cheam SM1 2LQ (the “property”).

2. By a notice of a claim dated 2 November 2016, served pursuant to section 42 of the Act, the applicant exercised his right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease granted on 26 June 1975 for a term of 99 years from 29 September 1974 at an annual ground rent of £30, rising to £60 then to £90. The applicant proposed to pay a premium of £19,000 to the intermediate (and competent) landlord, Brickfield Properties Limited, and £1 to the freeholder, The Halliard Property Company Limited, for the new lease.
3. On 13 January 2017, the respondent competent landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £85,794 to itself and £nil to the freeholder for the grant of a new lease.
4. On 10 July 2017, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:
 - (a) The gross internal floor area: 533 square feet;
 - (b) The valuation date: 3 November 2016;
 - (c) Unexpired term: 56.90 years;
 - (d) Present ground rent: £30 per annum for first 33 years, £60 for the second 33 years and £90 per annum for the third 33 years.

Matters not agreed

6. The following matters were not agreed:
 - (a) The long leasehold value;
 - (b) The ground rent capitalisation rate;
 - (c) Relativity;
 - (d) The deferment rate; and
 - (e) The premium.

The hearing

7. The hearing in this matter took place on 16 and 17 January 2018. The applicant was represented by Mr David Nesbit MSc MRICS; and the respondent by Ms Gemma de Cordova of counsel and Mr Robin Sharp BSc FRICS.
8. The applicant relied upon the expert report and valuation of David Nesbit dated December 2017; and the respondent relied upon the expert report and valuation of Robin Sharp dated 6 November 2017.

The subject property

9. The subject property is a ground-floor flat in a 1930s-built development of two storey purpose-built maisonettes. The property is approached from a communal front door and a small section of rear garden is demised, as is a small store. The flat comprises two bedrooms, a bathroom, kitchen and a reception room.
10. Photographs of the property and comparables were provided. 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.

Long leasehold value

11. For the applicant, Mr Nesbit relied on four relevant long leasehold sales of two-bedroom flats, all in the same development as the subject property and within 12 months of the valuation date: flats 1, 5, 8 and 35, The Maisonettes. Mr Nesbit said that the range of sale prices was narrow, between £237,000 and £293,000. The average was £272,500, but Mr Nesbit did not adjust the sale prices for time. In evidence, he said this was because he saw problems with indexing and he preferred to look to the best comparables within 12 months of the valuation date and simply use their sale prices, without adjustment.
12. On the basis of all the evidence, Mr Nesbit considered that a long leasehold value of £280,000 was appropriate for the property; which, after further discounts were made (dealt with below), resulted a net long leasehold/reversionary value of £260,000.
13. For the respondent, Mr Sharp considered six recent long lease sales in the development, namely: flats 1, 5, 8, 20, 24 and 35, The Maisonettes. Once their sale values had been adjusted for time, these together averaged £280,994, though Mr Sharp then discounted the sale of flat 8 because, he said, it appeared to have been sold privately and its price did not appear to represent value on the relevant date. According to Mr Sharp's valuation, removing the adjusted value of flat 8 from the long

lease comparables raised the average to £289,625, which figure he adopted as his long lease value.

The tribunal's determination

14. The tribunal determines that the long leasehold value is £289,588.

The tribunal's reasons

15. Mr Sharp's table of long lease values included a footnote in relation to a second sale of flat 5 in March 2017 for £280,000, representing a slight loss on the March 2016 sale of the same flat, at £281,500. Mr Sharp excluded this later sale from his schedule of comparable sales; and Mr Nesbit did not include it in his calculations. The tribunal therefore follows the experts and excludes it from consideration as well.
16. With regard to flat 8, Mr Sharp said that the sale price was out of kilter with the other transactions, as it had been a cash sale, with urgency, and had been a property in a very poor condition. Mr Nesbit confirmed that this was an auction sale and included the auction sale particulars as an appendix to his report. He stated that flat 8 was "in need of modernisation", but said the actual condition could not be verified visibly.
17. Ms de Cordova questioned the reliability of the sale of flat 8 because the sale price was significantly below the others and the fact that Mr Nesbit had not mentioned significant disrepair in his written report.
18. The tribunal considers that there is a generally a discount on auction sales, because auctions do not allow reasonable marketing time for the properties concerned. That is consistent with there being a lower sale price for flat 8. There was a suggestion that the flat was in much poorer state of repair, but no hard evidence. As the tribunal finds the sale price significantly out of kilter with other sales of broadly comparable properties at the time, it has decided to follow Mr Sharp's approach and to exclude flat 8 as a comparable. The leasehold sales of flats 1, 5, 20, 24 and 35, adjusted for time, average £289,588 which, without more, the tribunal would have adopted as a long leasehold value.
19. However, Mr Nesbit sought a further discount from the long leasehold value "to reflect an investor's concern that the tenant would acquire security of tenure under Schedule 10 of the Local Government and Housing Act 1989". He sought to justify that further discount on the basis of discounts applied in various cases at paragraph 7.1.12 of his report and on the basis of gross initial yields achieved at various properties at paragraph 17.1.17 of his report. On a full discount basis Mr Nesbit would have sought a £40,000 discount but, as that "would be somewhat penal", he adopted a quantum discount of £20,000.

20. *Hague on Leasehold Enfranchisement* deals with the possibility of a discount for the statutory right to remain at paragraph 33-07. While acknowledging that “this has had a major impact on value in cases where existing leases are very short” it goes on to say that “where the tenant has the right to remain as an assured tenant under the 1989 Act at a market rent, the discount is arguably nil ...”
21. The cases noted by *Hague* involved very short existing lease terms indeed: in one case, four years (*Aeberli*, a 7.5% deduction) and in another only four months (*Goldstein v Conley*, a 40% deduction). The 20% deduction in *Clarise Properties Ltd* [2012] UKUT 4 (LC) was in respect of an unexpired term of 28.5 years and was described by *Hague* as “controversial, not only because it is inconsistent with the deductions made in earlier cases but also because there was no evidence to support it”.
22. This issue was considered very recently by the Upper Tribunal in a recent decision of Mr A J Trott FRICS in *Midland Freeholds Ltd and Speedwell Estates Ltd* [2017] UKUT 0463 (LC), 29 December 2017, where he concluded at paragraph 65 that: “In these circumstances I am not persuaded that a hypothetical purchaser would make any discount to the [freehold vacant possession] value where the lease has an unexpired term of 46 years. I therefore make no deductions in respect of Schedule 10 rights under the 1989 Act.”
23. In the present case, the unexpired term is 56.90 years to reversion. The tribunal’s decision is therefore not to make any deduction due to Schedule 10 rights, because in the tribunal’s view the prospect of the statutory right to remain is too remote for an investor to take into account at the valuation date.
24. Mr Nesbit had not included the comparables of flats 20 and 24, The Maisonettes, because he had not been aware of them, even though they had taken place within 12 months of valuation date. Mr Nesbit’s comments are therefore incomplete and they had not been adjusted for time. The tribunal therefore determines that the long leasehold value should be £289,588.
25. It should be mentioned in passing that the tribunal considered that there was sufficient evidence from the sales of flats at The Maisonettes to reach this conclusion and it derived no assistance from the sales of the Copthorne Court properties also referred to by the parties.

Freehold value

26. Mr Nesbit's approach was to say that the long leasehold value was the same as the reversionary value of the freehold. Mr Sharp's approach was to take his adjusted long lease values and to apply a 0.5% addition for geared ground rent reviews and a 1% addition for the freehold (save for flat 1 where he sought 7.5% addition, for an 80-year lease to freehold).
27. The tribunal determines that a 1% addition to freehold is standard and reflects the benefits that freehold tenure has over leasehold. However, there should be no addition for the geared ground rents, which the tribunal does not consider are out of the norm.
28. The tribunal therefore determines that the appropriate freehold view is £292,484.

Capitalisation of the ground rent

29. Mr Nesbit contested for a capitalisation rate of 7% relying on a schedule of ground rent evidence showing gross yields and citing the factors to be considered as set out in *Nicholson v. Goff* [2007] 1 EGLR 83 (LT). The tribunal found that his arguments and calculations were very technical, but not very compelling. Mr Sharp contended for 6%, being common in suburban London, where the risk of not collecting the ground rent is very small and interest rates remain at a historic low.
30. The tribunal determines that the appropriate capitalisation rate is 6.5%. The appropriate yield commonly falls between 6% and 7% and there was no evidence or any strong arguments to say that one valuer was to be preferred over the other. In those circumstances, it is appropriate to select a mid-point between the two.

Short leasehold value

31. Mr Nesbit for the applicant contended for a short lease value of £216,034 and Mr Sharp for the respondent contended for £203,147.
32. Mr Nesbit did not identify or rely upon any short lease sale in the area that could be used as evidence of the existing short lease value of the subject flat at the valuation date. Instead, he relied upon the graphs of relativity to determine this value. In particular, he took a basket of the 2009 RICS Greater London and England graphs (Beckett & Kay, South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell) to give an average relativity for an unexpired term of 56.90 years of 83.09%. Mr Nesbit then applied this relativity to his reversionary value, to achieve an existing lease value of £216,034. He made no deduction for rights under the 1993 Act.

33. Mr Sharp on the other hand gave evidence of the short leasehold sale of flat 26, The Maisonettes, which sold for £160,000 on 5 March 2015, some 20 months before the valuation date of the subject property (and with a similar unexpired term). Mr Sharp adjusted that sale price for time, producing £190,910 at the valuation date. This calculation was not challenged by Mr Nesbit and, by reference to the House Price Index for Sutton, it appears to be correct mathematically. Mr Sharp then made further adjustments including 10% for condition, to produce an adjusted value of £208,742 (at this stage, inclusive of 1993 Act Rights).
34. At the start of the second day of the hearing, on 17 January 2018, Mr Nesbit sought to introduce new information, namely an email from Mr Pritan Patel, the new owner of flat 26. Mr Nesbit had sought this information some time previously, but Mr Patel had been away on holiday. It was relevant to the comparable, as it set out the basis upon which Mr Patel bought the flat in 2015. In particular, Mr Patel said that “There were number of factors limiting the sale price, including but not limited to: the seller was seeking a cash buyer only which restricted her target market, the seller needed a quick sale of her property, the seller was aware the lease had fallen below the minimum period would be subject to a marriage value fee at the time of lease extension, [and] there were significant repairs and maintenance required to bring the property to a liveable standard.”
35. Mr Sharp sought a 10% deduction for 1993 Act rights by a reference to an extract from that part of the Upper Tribunal decision in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC)¹, that related to Flat 5, 17 Cranley Gardens, SW7, where the tribunal accepted a 10% deduction for an unexpired term of 41.32 years. He said that this achieved a relativity of 64.21% for the subject’s unexpired term.
36. Mr Sharp then went on to say that this one sale acted as a pointer, but was not conclusive; and then, again by reference to *Mundy*, paragraph 169, he mentioned the graphs of relativity deemed reliable by the Upper Tribunal, namely the Savills 2015 enfranchiseable graph and the then “emerging” Gerald Eve 2016 table and graphs of relativity.
37. Both graphs indicate about 76.1% relativity (i.e. Savills 76.2% and Gerald Eve 76%). As is well known, the two graphs relate to the Prime Central London (PCL) area; and, in Mr Sharp’s opinion, relativity in Cheam will be lower because the local market is more mortgage-dependent and less international. In his opinion, the most reliable graph for properties in the suburbs is the Beckett & Kay (2014 and 2017) graph, which indicates a relativity of about 68%.

¹ See now the Court of Appeal decision upholding the Upper Tribunal at [2018] EWCA Civ 35, issued on 24 January 2018, after the hearing in this case.

38. The average of the relativities of the three graphs Mr Sharp relied upon, together with the 64.21% indicated by the market evidence of flat 26, produced an overall relativity of 69.44%, for which he contended.

The tribunal's determination

39. The tribunal determines that the existing short leasehold value is £210,325.

The tribunal's reasons

40. On the evidence before it in this case, the tribunal preferred Mr Sharp's approach over Mr Nesbit's, with regard to the valuation of the existing short leasehold value of the subject flat.
41. The starting point for considering the existing short leasehold value of the property is the market evidence of the sale of the subject itself, if available (see *Mundy*, paragraph 168). In the present case, there is no such evidence, but there is the market sale of a directly comparable property, Flat 26, The Maisonettes, for £160,000 some 20 months before the valuation date.
42. The tribunal considered the contents of Mr Patel's email regarding the circumstances of this sale and Mr Nesbit's assertion that the price paid for Flat 26 was "grossly underestimated". However, the argument was not sufficiently made out to justify further adjustments to the sale price beyond Mr Sharp's time adjustment and 10% adjustment for condition, both of which the tribunal adopts, producing a figure of £208,742. However, we do not agree with Mr Sharp's 10% deduction for 1993 Act rights.
43. While there is no fixed and agreed-upon tariff of percentage deductions for Act rights across different lease lengths, some general guidance may be gleaned from recent cases. A non-exhaustive table of discounts accepted or made by the Upper Tribunal for unexpired terms of 40 years or more is set out at paragraph 60 of *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 0494 (LC), a decision of Mr P D McCrea FRICS dated 29 December 2017. Although Mr McCrea also expressed caution in relying on past decisions, nonetheless in the *Orchidbase* decision he quoted, a 5.50% adjustment was made for 1993 Act rights, where there was an unexpired term of 57.68 years. As that is very close to the unexpired term in the present case (56.90 years), the tribunal adopts this deduction, 5.5%, which reduces the value net of 1993 Act rights, to £197,261. As against a freehold value of £292,484, this produces a relativity of 67.44%.
44. While this comparable does provide information of an open market short lease sale, the tribunal has doubts as to the "willingness" of the

seller, the condition of the flat and the need for a cash buyer given the length of the lease. As the relativity is out of kilter with the graphs and the circumstances of the sale are out of the norm, this comparable cannot be considered wholly reliable and must be treated with some caution.

45. The problem of having no reliable market transaction concerning the existing lease was anticipated in paragraph 169 of the *Mundy* decision, where in “the more difficult cases” it was envisaged that valuers might also have regard to “the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act” or “to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis.”
46. Given that we are only dealing with a single comparable and that questions may be raised as to its reliability, the tribunal agrees that it is appropriate, in accordance with *Mundy*, to have regard to the graphs of relativity as well as to the comparable sale.
47. While we had sympathy with Mr Nesbit’s approach, when he averaged the basket of 2009 RICS Greater London and England graphs, he gave no compelling arguments why those graphs should be preferred over the more up-to-date graphs relied upon by Mr Sharp. In our view, the 83.09% average relativity that those graphs produced was too high; and, in the light of the arguments we heard in this case, we concur with Mr Sharp when he says that the 2009 graphs are now somewhat out of date and that the property market has changed over the intervening eight years.
48. However, at the other extreme, we were not entirely satisfied with the reliability of the Beckett & Kay 2014 graph put forward by Mr Sharp, despite it having being accepted by some other tribunals. While the email from Beckett & Kay dated 5 September 2016 says that the graph now uses some transaction evidence in addition to opinion, there is no reference to the sample size, to the geographical relevance of the transactions, or to the balance between transactional evidence and opinion. Furthermore, the line of the graph had been “hand drawn as best fit to the data points the sales evidence gave”, producing a line which was significantly at variance to other graphs of relativity.
49. Therefore, in accordance with the *Mundy* decision, our approach has been to take the Gerald Eve 2016 graph as the “industry standard” and, despite criticisms of that graph too, as the least bad option. It is noteworthy that the Gerald Eve graph and the unenfranchiseable relativity column of the Savills 2015 graph are very close indeed. We therefore agree with Mr Sharp that these should be averaged, producing relativity of 76.1%.

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.

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)

LON/00BF/OLR/2017/0963 - 25 The Maisonettes, Alberta Avenue, Cheam, Sutton, SM1 2LQ

(Valuation revised 8 March 2018, in italics)

A 2 bedroom maisonette with living room, kitchen, bathroom, held on a 99 year lease from 25 March 1975. No improvements are to be excluded.

Agreed date of valuation 3 November 2016. Agreed 56.9 years unexpired term.

Current Ground rent £60 rising to £90 in 23.6 years

Extended Lease Value £289,588

Freehold Vacant Possession Value £292,484

Relativity rate 71.91%. Deferment rate 5%. Capitalisation rate 6.5%.

Value of the Landlord's present interest

Ground Rent	£60	
YP for 23.6 yrs @ 6.5%	<u>11.90416</u>	
		£714.25
Ground Rent	£90	
YP for 33.26 yrs @6.5% def 23.6	<u>3.05192</u>	
		£274.67
Reversion to <i>Freehold</i>	£292,484	
PV of £1 @5% for 56.9	<u>0.06228</u>	
		<u>£18,215.90</u>
		£19,205

Value of eventual reversion (FHVP)	£292,484	
PV of £1 @ 5% def 146.69	<u>0.00078</u>	
		£228.14
		<u>£228</u>

Diminution of the Landlord's interest **£18,977**

Marriage value

Value of Tenant's interest after grant of new lease	£289,588	
Plus Value of landlord's future interest	<u>£228</u>	
		£289,816

Less		
Existing lease value (-1993 Act rights)	£210,325	
Value of landlord's existing interest	<u>£19,205</u>	
		<u>£229,530</u>

Marriage Value £60,286

50% **£30,143**

Premium payable (ex costs) £49,120