



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

Case reference : **LON/00BF/OLR/2015/0657**

Property : **Ground floor flat, 105 St James Road, Sutton, Surrey SM1 2TJ (“the flat”)**

Applicant : **Nicola Catherine Elizabeth Molina (“the tenant”)**

Representatives : **Carpenter & Co, Solicitors**

Respondent : **Roland Way (“the landlord”)**

Representatives : **Porter & Co, Solicitors**

Type of application : **A new lease claim**

Tribunal members : **Angus Andrew
Richard Athow**

Date and Venue of hearing : **10 November 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **25 November 2015**

DECISION

Decision

1. The long leasehold value of the flat at the agreed valuation date was £315,000.
2. Relativity of 68% is to be applied to calculate the existing lease value of the flat.
3. The price to be paid for the new extended lease is £67,500 in accordance with our valuation at appendix 2.

The application and hearing

4. The tenant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of the flat.
5. On the morning of 10 November 2015 we heard evidence from the parties' expert witnesses. Mr Roger Weston FRICS gave evidence on behalf of the tenant whilst Mr Roger Russ FRICS gave evidence on behalf of the landlord. During the afternoon we inspected the flat and the exterior of the comparable flats referred to in this decision. During our inspection of the flat we were accompanied by both expert witnesses and the tenant was also present.

Background

6. 105 St James Road was originally a semi-detached house that has been converted to form a ground floor flat and a maisonette on the first and attic floors. The tenant holds the ground floor flat under a lease granted in 1961 for a term of 99 years from 24 June 1961. The landlord owns both the lease of the upper maisonette that was granted in 2000 and also the freehold reversionary interest in 105 St James Road.
7. A parking space to the front and a rear garden are included in the demise of the flat. The parking space would originally have formed part of the front garden whilst the rear garden is approximately half of the original rear garden with the other half being included in the demise of the upper maisonette.
8. The flat itself is spacious and comprises two bedrooms, lounge, dining room, kitchen, bathroom, WC and a large entrance hall. It has the benefit of central heating and partial double glazing. The kitchen and bathroom fittings are dated and in need of modernisation. The flat suffers from subsidence and an insurance claim was first made in the late 1980s. On

inspection we noticed cracks in the walls on either side of the dining room and the most severe crack is currently being monitored presumably in connection with an ongoing claim. There signs of movement in various parts of the flat.

9. On 10 September 2014 the tenant gave notice of her claim to extend her lease. On 13 November 2014 the landlord gave a notice in reply admitting the claim. On 31 March 2015 the tenant made her application to the tribunal.

Issues in dispute

10. The two experts had agreed the following:

- a. The valuation date at 10 September 2014
- b. An unexpired term at the valuation date of 45.784 years.
- c. A gross internal area of 83 square metres
- d. A deferment rate of 5%
- e. A capitalisation rate of 7%.

11. Two issues remained in dispute. The first was the extended lease value of the flat. The second was the relativity to be applied to that value to calculate the existing lease value at the valuation date.

12. Mr Weston on behalf of the tenant contended for an extended lease value of £237,500 and a relativity of 73.13%. Mr Russ contended for an extended lease value of £347,500 and a relativity of 68%.

Mr Weston's approach

13. Mr Weston drew our attention to the sale of four properties in the vicinity of the flat. A two bedroom flat at 124 Grove Road had sold for £302,000: a two bedroom flat at 91 Camden Road for £250,000: a one bedroom flat at 34 St James Road for £225,000 and a two bedroom flat at 55 St James Road for £300,000.

14. Mr Weston did not adjust for time and neither did he think it appropriate to have regard to the floor areas of the flat and the comparable flats upon which he relied. Rather he obtained a letter from a local firm of estate agents who inspected the flat at his request. They suggested a sale price of £287,500 if the flat was in "*an improved condition*". Allowing £37,500 for refurbishment works they suggested a "*net value of £250,000*" that they discounted by a further 5% "*for the additional problems*", which was clearly a reference to the ongoing subsidence claim. Mr Weston largely adopted the figures suggested by the estate agents in contending for an extended lease value of £237,500.

15. In considering relativity both valuers relied on the Greater London and England relativity graphs in the October 2009 RICS research report. That report lists five graphs: Becket and Kay, Austin Gray, Nesbitt and

Co, South East Leasehold and Andrew Pridell Ltd. Mr Weston discounted the Becket & Kay and Austin Gray graphs. The remaining 3 graphs gave a relativity of 77.13%. At the hearing and in answer to our question he explained that he discounted the Becket and Kay graph because it related predominantly to landlord transactions and the Austin Gray graph because he understood that it related mainly to properties in the Brighton and Hove area.

Mr Russ's approach

16. Mr Russ relied on three comparable sales all within the immediate vicinity of the flat. A two bedroom ground floor flat at 137A St James Road had sold for £260,000: a two bedroom first floor flat at 12 St James Avenue had sold for £235,000 and a two bedroom ground floor flat at 44b St James Road had sold for £200,000.
17. Mr Russ adjusted for time by using the Land Registry House Price Index for the London Borough of Sutton. He also made a number of other adjustments to reflect differences between the flat and the comparable flats. He then calculated the price per square metre for each of the comparable flats. The application of those prices to the area of the flat produced values of £336,750, £356,000 and £350,000. He averaged those values to produce a long lease value for the flat of £347,500.
18. Mr Russ suggested that the subsidence did not justify a reduction in the value of the flat. Nevertheless he accepted that we might be against him on that. If we were, he suggested a 10% reduction resulting in a reduced valuation of £312,750.
19. Turning to relativity Mr Russ relied on all five relativity graphs in the Greater London and England section of the RICS report giving an average relativity of 68%.

Reasons for our decision

Extended lease value

20. We had considerable reservations about Mr Weston's approach. He largely relied on the unsupported opinion of a local estate agent. Furthermore that agent had acted on the sale of the three comparable flats upon which Mr Weston relied. In two of them the price achieved was substantially higher than the asking price indicating that the agent may be prone to undervalue. Mr Weston's failure to adjust his comparables either for time, differing characteristics or area was unhelpful. In particular we disagree with his suggestion that the floor area of a flat was not particularly relevant when determining its value. That suggestion is neither consistent with our experience nor is it logical. In general terms larger flats command higher prices than smaller ones.
21. We preferred the approach of Mr Russ which was professional, measured and consistent with the approach adopted by the overwhelming majority

of valuers giving evidence before the London tribunal.

22. Having inspected the exterior of the comparables we consider that only 44B St James Road can be used with any degree of confidence. As with all the other comparables it is significantly smaller than the flat. Nevertheless it is a ground floor two bedroom flat in a similar style of building with a parking space to the front and a garden to the rear. The agent's particulars referred to a communal garden at the rear and that may well be the legal position. However on inspection it is apparent that the garden is divided in much the same way as that at 105 St James Road.
23. Of the other comparables 125 Grove Road and 91 Camden Road are some distance from the flat and certainly the former property is in a different area. 34 St James Road is a small one bedroom flat whilst 55 St James Road is in a much larger building that is somewhat dilapidated and has the appearance of a house in a multi occupation. 137 St James Road is a terraced house whilst 12 St James Avenue, although a semi-detached house in name, is separated from the adjoining property by a very narrow gap and has no off-street parking.
24. We agree with Mr Weston that a discount has to be made to reflect subsidence. However the discount can be overstated in an area such as this where many properties are owned by investors. Whilst subsidence will deter mortgage dependent purchasers it will generally not deter investors in the buy-to-let market. We have adopted the 10% reduction in value suggested by Mr Russ. That is a realistic discount for a defect that will limit the pool of potential purchasers.
25. Our analysis of the sale price of 44b St James Road is set out in Appendix 1 to this decision: it indicates an extended lease value of £315,000 for the flat.

Relativity

26. Mr Weston had ignored the two relativity graphs that were least favourable to his client's position. We have some difficulty with his explanations. The RICS research report states that the Becket and Kay graph relates to "*lower value properties*". In the context of the South East the flat is such a property and the graph is clearly relevant. As far as the Austin Gray graph is concerned the geographical spread is more accurately described as "*South East – primarily Brighton and Hove*" and we are satisfied that the graph is relevant to the Sutton area.
27. As pointed out in the RICS report the members of the working group were unable to agree a definitive graph. All the relativity graphs commonly used are open to criticism for the reasons stated in the report. Perfect evidence of short lease values in a "*no act*" world is no longer available. In such circumstances we agree with Mr Russ that in considering relativity the widest possible number of graphs should be considered. That approach reduces the risk of relying on one or a small number of graphs that may be fundamentally flawed. Consequently we

agree with Mr Russ that all five graphs should be used in determining relativity and we therefore adopt his approach and find a relativity of 68%.

Conclusion

28. Adopting the extended lease value of £315,000 and relativity of 68% we calculate the price to be made for the extended lease at £67,500 in accordance with the calculations contained in the second schedule to this decision.

Name: Angus Andrew

Date: 25 November 2015

Ground Floor Flat, 105 St James Road, Sutton, Surrey SM1 2TJ

LEASEHOLD REFORM , HOUSING AND URBAN DEVELOPMENT ACT 1993 Section 48

Analysis of Value of Flat with extended Lease

44b St James Road

Sale Price	£	200,000	
Gross Internal Floor Area (sq metres)		52.2	
Completion Date		28/03/2014	
Land Reg HPI at completion date	28/03/2014	349.37	
valuation date	10/09/2014	387.27	
	%age increase	10.85%	
Adjust price to valuation date	£	200,000	
		10.85%	£ 221,696
SAY			£ 220,000
Rate per sq metre	£	4,215	

GFF 105 St James Road

GIFA		83	
Rate per sq metre	£	4,215	
Comparative Valuation		£ 349,808	
SAY			£ 350,000
<u>less</u>			
Discount for subsidence issues		10%	£ 35,000
Net Value of GFF 105 St James Road			£ 315,000

Appendix 1

Ground Floor Flat, 105 St James Road, Sutton, Surrey SM1 2TJ

LEASEHOLD REFORM , HOUSING AND URBAN DEVELOPMENT ACT 1993
Section 48

LEASE EXTENSION COMPUTATIONS

Lease term	99 years
from	24/06/1961
Ground Rent	£ 10.50 p.a.
Valuation Date	10/09/2014
Unexpired Term	45.784 years
Improved lease Value	£ 315,000
Existing lease value discount	68% of extended lease
Capitalisation rate for Term	7.00%
Deferment Rate for Reversion	5.00%

PREMIUM

Freeholders Existing Interest

Ground Rent	£	10.50		
YP Purchase		45.784		
	@	7.00%	13.640	£ 143.22

Term & Reversion

	45.784	£ 315,000		
PV £1 @		5.00%	0.107	£ 33,705
				£ 33,848

Value of Proposed Interest

Freeholders reversion after	135.78 yrs	£ 400		
Tenant		£ 315,000	£ 315,400	(Total A)

Value of present interest

Freeholder		£ 33,848		
Tenant	68% of £ 315,000	£ 214,200	£ 248,048	(Total B)
Marriage Value	A - B		£ 67,352	
Share of Landlord	50%			£ 33,676

Figure to Extend Lease				£ 67,524
			SAY	£ 67,500

Appendix 2