



FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case references	:	LON/00AE/OLR/2016/0857 LON/00AE/OLR/2016/0911 LON/00AE/OLR/2016/0921 LON/00AE/OLR/2016/0930 LON/00AE/OLR/2016/0943; and LON/00AE/OLR/2016 0947
Applicants and Properties	:	All the flats are located in North End Road Wembley. D. Kaur 10 Danes Court M.M Shah & S Mehta 19 Empire Court K.K.B Shah 22 Empire Court A & E.A Shah 32 Danes Court J.J & N.U Patel 52 Empire Court K.K Bhagwanji & N.K Shah 77 Empire Court J.J & N.U Patel 117 Empire Court D A D Shah 180 Empire Court K.K.R Sawjani 229 Empire Court
Solicitor	:	Atul Shah, solicitors
Respondent	:	LKB Investments Limited
Solicitor	:	Bude Nathan Iwanier, solicitors
Type of application	:	Applications to determine the premium payable on flat lease renewals under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act")
Tribunal member(s)	:	Judge Pittaway Mrs H Bowers MRICS
Date and venue of Hearing	:	28 September 2016 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	24 November 2016

DECISION

Summary of the Tribunal's decisions

The parties having agreed to a premium of £110,000 for 10 Danes Court the table below shows the tribunal's determination in relation to the remaining flats as to the vacant possession freehold value, the existing lease value and the premium payable for the statutory lease extension for each flat.

Property	Freehold vacant possession value	Existing Lease value	Premium
19 Empire Court	£207,077	£148,474	£34,846
22 Empire Court	£197,705	£141,755	£32,896
32 Danes Court	£263,756	£189,133	£43,935
52 Empire Court	£210,929	£151,236	£35,279
77 Empire Court	£265,356	£190,188	£44,167
117 Empire Court	£251,800	£180,540	£41,991
180 Empire Court	£249,921	£179,193	£41,819
229 Empire Court	£208,580	£149,552	£34,886

Background

1. The applicants seek determinations pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for each of the proposed extended leases of the various properties at Empire Court and Danes Court, North End Road, Wembley, more particularly identified on the first page of this decision (the "properties").

2. By notices of claim served pursuant to section 42 of the Act the applicant tenants of the properties exercised their right for the grant of a new lease in respect of their respective properties. The notices proposed specified premiums for each property.
3. By appropriate counter-notices the respondent landlord admitted that the applicants had the right to acquire new leases and counter-proposed alternative premiums.
4. By various applications the applicants applied to the tribunal for a determination of the respective premiums for each of the properties.
5. The tribunal issued directions on or around 28 June 2016 in respect of the applications and agreed that they should all be heard at one hearing.

Matters agreed

Before the hearing the following matters were agreed

1. The valuation dates for the properties, namely;

10 Danes Court	4 December 2015
32 Danes Court	19 October 2015;
19, 22, 77, 180 and 229 Empire Court	19 October 2015; and
52 and 117 Empire Court	16 November 2015.
2. The lease terms at the respective valuation dates, namely;

10 Danes Court	18.29 years;
32 Danes Court	59.42 years;
19, 22, 77, 180 and 229 Empire Court	59.42 years; and
52 and 117 Empire Court	59.34 years.

Note: the statement of agreed matters did not refer to Flat 32 Danes Court but the tribunal have assumed this was an error and have assumed a term of 59.42 years for this flat.

3. The capitalised value of the annual ground rent income receivable for each property;

10 Danes Court	£737
32 Danes Court	£1,492
19 Empire Court	£1,896
22 Empire Court	£1,065
52 Empire Court	£1,458
77 Empire Court	£1,492
117 Empire Court	£1,494

180 Empire Court	£1,792
229 Empire Court	£1,463

4. The deferment rate to be 5% for all the properties, except for 10 Danes Court where it is to be 5.25%.
5. The accommodation and floor level of each flat and its gross internal area (areas for 2 flats being set out in the statement of agreed facts and the applicants' surveyor agreeing to accept Chesterton's figures for the other properties at the hearing).
6. That third floor flats are worth 5% less than flats on the first or second floors.
7. An allowance of £12,5000 to reflect improvements where appropriate in analysing comparables
8. The extended lease value is 99% of the freehold value vacant possession value for all the properties except 10 Danes Court, where the extended leasehold value is 98% of the freehold vacant possession value.
9. A discount should be applied in the valuation of 10 Danes Court to reflect the presence of a statutorily protected tenant.

At the hearing

10. The parties agreed that the appropriate index to adjust comparables with reference to the valuation dates was the Land Registry index for the Borough of Brent; and
11. The tribunal, noting that the valuers' proposed figures for the same ~~were close, invited the parties to consider compromising the value~~ given to a freehold garage (at £12,500); a garage on a lease for 60 years (at £8,250); and the premium payable for the extended lease of 10 Danes Court (at £110,000), in the interests of proportionality. The parties agreed to this invitation of the tribunal.

Matters not agreed

12. The freehold vacant possession values, including the effect on value of balconies, a flat being on the ground floor, and where the flats directly faced the railway lines.
13. The existing lease value

14. The gross internal area ("GIA") of the comparable flats, and whether it was necessary to agree these.
15. The timing of the deduction of £12,500 to reflect improvements, whether before or after indexation.

Inspection

Both parties agreed that an inspection was not necessary. The tribunal agreed that there was sufficient information available to it regarding the points in issue to obviate the need for an inspection.

The hearing

The hearing took place on 28 September 2016. The applicants were represented by Mr Andrew Lester of AML Surveys and Valuation Limited; and the respondent by Mr EF Shapiro of Chestertons.

Evidence

1. At the hearing the tribunal had before it bundles of documents, which included the expert report of Mr Lester MRICS of AML Surveys and Valuations Limited, upon which the applicants relied, and the expert report of Mr E F Shapiro FRICS of Chestertons, upon which the respondent relied. The tribunal have had regard to these expert reports and the evidence given by the experts at the hearing in reaching their decision.
2. The tribunal have also had regard to the following cases referred to at the hearing
Earl Cadogan v Farrokh Faizapour & John Stephenson [2010] UKUT 3 (LC) ("Faizapour")
Arrowdell Ltd v Coniston Court (North) Hove Ltd, Court of Appeal - Lands Tribunal, October 31, 2006, [2006] EWLands LRA_72_2005 ("Arrowdell")
Trustees of Sloane Stanley Estate v Mundy & Lagesse ; Aaron v Wellcome Trust Ltd [2016] UKUT 0223 (LC) ("Mundy")
3. At the hearing the tribunal requested that the applicants provide the tribunal, after the hearing, with a revised valuation for flat 117 Empire Court (because it was actually a two bedroom flat and not a large one bedroom flat as initially valued by Mr Lester). This Mr Lester did.
4. At the hearing the tribunal requested that Chestertons provide the tribunal, after the hearing, with larger photographs of the bathrooms and kitchens of the comparable flats where there was disagreement

between the experts as to whether or not they had been improved. This they did.

Freehold vacant possession value

5.

- 5.1 Mr Lester submitted that the appropriate comparables to refer to were those which related to flats which had been sold within a year before the relevant valuation dates (appropriately indexed); namely back to no earlier than October 2014, because the sale prices of the flats sold in 2013 did not reflect the significant improvements that the landlord had carried out at the properties, approximately five years ago. The cost of these improvements had impacted on the service charge, and he considered that this increased service charge had affected the sale prices of properties in 2013.
- 5.2 Mr Lester explained that in valuing these properties, where the leases were likely to be bought by rental investors, the floor area of the flats was less relevant than the number of bedrooms in the flat in question and invited the tribunal to consider the flats as being one of three types; two bedroom flats, one bedroom flats and large one bedroom flats, whose configuration with two windows in the living room was such that they could be converted into 2 bedroom flats (this had been done at 117 Empire Court). He submitted that most local agents did not refer to the gross internal areas ("GIA") of flats in their sale particulars. It was however noted that various of the screen shots of particulars produced as part of his evidence included floor plans and what appeared to be floor areas.
- 5.3 Mr Lester submitted that the agreed deduction for condition should be made before the sales price of a comparable was adjusted by reference to the agreed index (the Land Registry index for the Borough of Brent) because the Act requires an assumption that the property is in an unimproved state. Property specific adjustments should then be applied to each flat.
- 5.4 He did not consider there was any need to adjust the value for the existence or not of a balcony, nor for whether the flat directly faced the railway. His only evidence to support these assertions was hearsay evidence as to what he had been told by local agents.
- 5.5 He submitted that the appropriate adjustment for a flat on the ground floor was a reduction in value of 2.5% to reflect that in his opinion ground floor flats are less desirable from a security perspective.

5.6 Mr Lester proposed a base value for a 2 bedroom flat of £265,000; a large one bedroom flat of £240,000 (citing 117 Empire Court by way of example) and a small one bedroom flat of £210,000

6.

6.1 Mr Shapiro based his valuation on an adjusted value per square foot for each property, irrespective of the number of bedrooms. He submitted that while the number of bedrooms in a flat might be relevant to a purchaser, a more detailed analysis was required when undertaking this type of valuation. He stated that his analysis, based on an average value per square foot of the comparable flats, produced a result that was within a 10% tolerance of the value per square foot effectively achieved by Mr Lester. Mr Lester accepted that a 10% tolerance was an acceptable tolerance.

6.2 There was disagreement between Mr Lester and Mr Shapiro as to the reliability of the sources from which Mr Shapiro had obtained his square footage evidence, with Mr Lester questioning the accuracy of floor areas provided by agents. Both agreed that EPC floor areas were not reliable evidence of the square footage of the flats.

6.3 Mr Shapiro, citing *Faizapour*, submitted that it was appropriate to make the non-physical adjustments first (eg for time) before making the adjustments for physical factors. Mr Lester accepted that it is logical to adjust for time first to get a valuation date and then take the "constant" deduction for improvements at the relevant valuation date.

7.

7.1 The surveyors were not in agreement as to the use of comparables which post dated the valuation date, nor as to how far before the valuation date one could look at comparables. Mr Lester did not consider comparables whose date of sale was more than a year before the valuation date to be reliable comparables, whereas Mr Shapiro submitted that any sale after 2013 might be considered, as only looking at the comparables from 2015 provided too small a sample, and also took as evidence sales that occurred after the valuation dates.

7.2 Mr Lester did not consider it appropriate to include sales which post dated the valuation dates as these will have been affected by increase in demand for the block (evidence of such increased demand was not provided to the tribunal) and the effect of the increase in SDLT. Mr Shapiro submitted that 2016 sales were useful comparables, arguing that a 2016 purchaser would have agreed the price taking all then relevant factors into account. Mr Lester conceded that 2016 comparables were useful, but only as secondary evidence.

8. On adjustments;
- 8.1 Mr Shapiro submitted that although the schedule he provided to the tribunal indicated an adjustment of 14.63% for flats which faced the railway he was prepared to accept an adjustment of 7.5% as that was proposed and considered fair in an (unnamed) case before a tribunal a week before the hearing. Mr Lester did not agree, because it was an adjustment to the rate per square foot figures, which was not his basis of valuation.
- 8.2 Mr Lester did not consider a balcony affected the valuation of any flat, or necessitated an adjustment to the valuation; as these were not a feature that would influence buy to let investors who are the primary purchasers of these flats. Mr Shapiro submitted that a balcony had a subjective importance (an outside space for plants, smoking, washing). He invited the tribunal to consider an adjustment of £5,000 per flat, which was a figure that he thought appropriate, but he admitted he was without evidence to back up the figure.
- 8.3 Mr Lester proposed an adjustment of 2.5% to the value of flats on the ground floor whereas Mr Shapiro submitted that whether a flat was on the ground floor made no difference to the value per square foot. Any potential security issues of a flat being on the ground floor were balance by the attraction of a flat that did not have stair access.

Existing lease valuation

9. Mr Lester referred the tribunal to the approach in *Arrowdell* of looking at short lease sales and then applying an appropriate relativity, although he did acknowledge that the recent decision in *Mundy* made it clear that the preferred evidence (if available) was market evidence.

In the context of market evidence Mr Lester referred to both his primary and secondary comparables, the latter being outside the twelve month period of his primary comparables. Mr Shapiro put to him this was inconsistent with his approach in relation to the freehold vacant possession value, where he only had regard to his primary comparables.

10. Mr Shapiro, also referring to both *Arrowdell* and *Mundy* argued that as there was evidence of existing lease value this should be the preferred method of establishing relativity. He referred to three comparables, of which only 109 Empire Court was held on a lease of a term similar to that of the subject property; the other two 193 and 33 Empire Court having shorter terms in the region of 19 years for which he made a subjective deduction of £6,000 each. On the basis of these he showed the average existing lease rate for a lease of 59.4 years to be £337 per square foot, establishing a relativity of 71.70%.

11. As to the deduction to reflect a "no Act" world
- 11.1 Mr Lester applied a formula derived from the decision in *Cadogan Square Properties Ltd v Cadogan*, [2010] UKUT 427 (LC), and taking the average of various graphs for RICS Prime Central London (taken from "myleasehold" graphs of relativity for a lease with an unexpired term of 59.42 years) submitting that a deduction for "No Act" rights of 5.08% was appropriate.
- 11.2 Mr Shapiro submitted that Mr Lester was wrong to ignore the Savills' graphs, arguing that in the *Mundy* decision they had been approved, although the Gerald Eve graph was preferred. He argued that they were relevant even though they related to property in Prime Central London, which these properties are not. Mr Shapiro's approach was to use the latest Savills graph published in June 2016, after the decision in *Mundy* to establish a deduction of 6.12%.

Reasons for the tribunal's decision.

10 Danes Court

1. The parties having agreed to a premium of £110,000 for 10 Danes Court there is nothing before the tribunal to determine in relation to that property.

Freehold vacant possession value

- 1.1 The tribunal accept Mr Lester's submission that for an investor the number of bedrooms may be of more importance than the square footage of the flat. However they also agree with Mr Shapiro that a valuation on a square footage basis is a more accurate valuation tool where there is a difference in size between the flats, and between the flats and the comparables. Of the subject properties
 - (a) 158 Empire Court is claimed to have a GIA of 553 square feet. It appears to the tribunal from its lease plan to be identical to 154 Empire Court which is claimed to have a GIA of 586 square feet, a difference of 33 square feet.
 - (b) 224 Empire Court (which the tribunal notes has bays but which is otherwise similar to the above) is claimed to have a GIA of 562 square feet

The tribunal agrees that the square footage evidence provided may not be accurate but considers that it is the best evidence of square footage available in this case.

2. The tribunal agreed with the approach taken by Mr Shapiro, following *Faizapour*, in adjusting for time before adjusting for physical factors,

noting that at the hearing Mr Lester accepted that this was a logical approach.

3. The tribunal considered the differing approaches to the date range for comparables taken by the two surveyors and prefer the longer period used by Mr Shapiro to the one year cut-off adopted by Mr Lester, as it offers a wider range of comparables. As comparables sold after the valuation date can be adjusted back to the valuation date (in the same way as historic comparable can be adjusted forward to the valuation date) they agree with Mr Shapiro's inclusion of comparables sold after the valuation date. In coming to this conclusion the Tribunal is minded of the approach taken by Mr Lester in considering short lease evidence beyond the year cut off period that he adopted for his long lease evidence. Additionally the tribunal consider that the impact of the refurbishment would have worked its way through into values by the time range suggested by Mr Shapiro.
4. The tribunal did not consider either 163 Empire Court or 109 Empire Court as comparables on the basis that they had not been sold.
5. The tribunal then turned its attention to what adjustments needed to be made to reflect differing physical condition.
 - 5.1 The surveyors were agreed that a deduction of £12,500 to reflect improvements was appropriate. Both surveyors agreed that 80 Danes Court was improved and the tribunal therefore used this as a benchmark against which to assess whether the comparables had been improved. On the basis of the information made available to the tribunal at the hearing and (as requested) subsequently it appeared to the tribunal that on balance the comparables to which it was having regard (excluding 163 Empire Court and 109 Empire Court) were all improved except for 69 Danes Court.
 - 5.2 On balance the tribunal agrees with Mr Shapiro that the existence of a balcony is an amenity, and not a liability, as suggested by Mr Lester. They therefore accept Mr Shapiro's suggested adjustment of £5,000 for the existence of a balcony.
 - 5.3 There was no evidence before the tribunal to substantiate the deduction of 2.5% that Mr Lester proposed for the flats on the ground floor (for their greater vulnerability) and the tribunal agrees with Mr Shapiro that in a block of this nature, the advantage to some of a flat of the ground floor counteracts any perceived security risk, and that no deduction should therefore be made for flats on the ground floor.

The comparables provided by the surveyors did not offer evidence of the proximity of the railway affecting value. The tribunal note that the filed plan for title number NGL600072 confirms that some of the flats

are indeed very close to the railway and consider that it is appropriate to make some adjustment to reflect this proximity/ that a flat faces the railway. At the hearing Mr Shapiro produced a schedule which showed a differential between the railway facing and non railway facing flats the subject of the application to be 14.63%. He then proposed an (arbitrary) adjustment of 7.5%. In the absence of any other evidence in this regard the tribunal accept Mr Shapiro's adjustment.

- 5.4 The tribunal therefore adopts Mr Shapiro's average 'standard' freehold value of £470 per square foot. That is applied to the subject flats each of which may then be subject to further adjustments for issues such as the existence of a balcony, floor level and the orientation of each flat in relation to the railway line.
- 5.5 Of the long lease comparables the tribunal notes that in relation to the three which were actually measured 36 Danes Court was measured at a gross internal area (GIA) of 559 square feet (£465/sq ft) and 224 Empire Court at 562 square feet (£460/sq ft) (both of which Mr Lester described as large one bedroom flats) 69 Danes Court was measured at 446 square feet (£456/sq ft) (which Mr Lester described as a small or "standard" one bedroom flat). The average value per square foot of these properties is £460, which is additional substantiation of the value per square foot that Mr Shapiro has adopted.
6. The tribunal therefore accepts Mr Shapiro's freehold vacant possession values.

Existing leasehold value

7. In light of the decision in *Mundy* Mr Shapiro's approach of looking at market evidence must be the preferred approach, as such evidence was available in the present case.
8. While *Mundy* contemplated Gerald Eve as the preferred graph in assessing relativity it also acknowledged that the use of Savills' graph was a possible alternative. The tribunal heard no compelling evidence from Mr Lester as to why the Gerald Eve graph should be used in preference to the Savills' graph. In fact Mr Lester suggested that a potential purchaser would look at the data presented by the 'myleasehold' website and use that to inform any decision process in making an offer on a property. In the view of the tribunal a potential purchaser of a short lease, using this data source would adopt the higher percentage to present a more robust offer on purchase. Therefore the tribunal adopts the greater percentage, which is the 6.26% taken from the Savills' graph, rather than the 5.08% derived from the Gerald Eve graph to reflect 'No Act Rights'.
9. The tribunal therefore accepts Mr Shapiro's existing leasehold values.

Premiums

10. It follows from the tribunal having accepted Mr Shapiro's freehold vacant possession values and his existing leasehold values that the tribunal also accepts his premiums.

Name: Judge Pittaway

Date: 24 November 2016

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).