4366

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	LON/00AJ/OLR/2016/0817
Property	:	Ground floor maisonette and store 90 Connell Crescent London W5 3BL
Applicant	:	Justine Rebeccah Johnson and Richard Anthony Johnson
Representative	:	Ms Mitchell of Vickers & Co, solicitors
Respondent	:	Brickfield Properties Limited
Representative	:	Ms N Muir of counsel; Ms Neale of Wallace LLP
Type of application	:	Application to determine the premium payable on a flat lease renewal under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993
Tribunal member(s)	:	Judge Pittaway Mr D Jagger MRICS
Date and venue of hearing	:	26 October 2016 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	29 November 2016

DECISION

Decisions of the tribunal

The valuation date:	**30 September 2015**
Existing lease value:	**£275,549.00**
Premium:	**£ 32,051.00**

The Tribunal's valuation is set out in Appendix A to this decision.

Background

1. **The Application**

By an unsigned application dated 16 May 2016 the applicants sought a determination 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 the extension of the lease of the Property

2. **The Property**

The Property the subject of this application is a 1930s purpose built mid terrace ground floor maisonette in a two story building on the southern side of Cornell Crescent. It has the benefit of front and part section of rear south facing garden. Similar maisonettes on the northern side of Cornell Crescent abut on Western Avenue (A40). It consists of 1 bedroom, reception room with bay window, kitchen and bathroom. The windows are double-glazed and it has gas central heating.

The gross internal area is agreed at 495 sq.ft. and it is agreed that there are no improvements.

3. **Background**

3.1	Date of tenant's notice:	24 September 2015
3.2	Date of landlord's counter-notice:	3 December 2015
3.3	Date of (unsigned) application to Tribunal:	16 May 2016

4. **Details of tenants leasehold interest**

4.1 Term of lease: 99 years from 24 June 1981

4.2 Ground rent: £60 p.a. rising to £120 on 26 June 2021 and £180 pa on 24 June 2054

5. **Matters agreed**

5.1 There was a statement of facts agreed which identified that the following were agreed

(a) The Deferment rate: 5%
(b) The Capitalisation rate: 6 %
(c) The leasehold/freehold differential in value: 1%
(d) That the flat was a one bedroom flat (495 sq ft)
(e) No deduction was required for improvements

While the valuation date was not agreed the parties did agree that whichever was the correct date did not impact upon the unexpired lease term, which the parties agreed at 64.731 years.

6. **Matters in Dispute**

6.1 The Matters in dispute were
(a) The valuation date; 24 September or 30 September
(b) The existing lease value.

6.2 Parties' respective positions were

	A	R
Valuation date	25 Sept. 2015	30 Sept 2015
The Extended lease value	£297,000	£330,000
Notional freehold	£299,970	£333,333
Short Lease Value	£260,796	£266,133

6.3 The applicants' valuer adopted a relativity of 87.81% between the value of the FHVP value and the value of the existing leases without 1993 Act rights for the property.

6.4 The respondent's valuer adopted a relativity of 79.84% between the FHVP value and the value of the existing leases with 1993 Act rights. This includes an adjustment of 10% from the existing lease value with 1993 Act rights to adjust for the "No 1993 Act Rights"

7. **Evidence**

7.1 The Tribunal had before it the valuation report of Mr Stacey MRICS, acting for the applicants dated 18 October 2016. The Tribunal also had before it the valuation report of Mr Robin Sharp BSc FRICS for the respondent, dated 7 October 2016.

7.2 Before the hearing Ms Nicola Muir, counsel to the respondent, provided the tribunal with a skeleton argument.

7.3 Both expert valuers gave evidence at the hearing and were each cross-examined.

7.4 The tribunal have had regard to the valuers' evidence, the cross examination and the other papers before them in reaching their determination and comment on specific aspects of these in their reasons below.

7.5 The tribunal also had regard to the decision in *Calladine-Smith v Saveorder Ltd [2011] EWHC 2501 (Ch),* referred to by Ms Muir, and *Trustees of Sloane Stanley Estate v Mundy& Lagesse [2016] UKUT 0223 (LC)* to which both valuers referred in their evidence.

8. Inspection

Both parties agreed that whether the tribunal considered that an inspection was necessary would depend upon whether they wished to ascertain the impact on value of the properties on the northern side of Connell Crescent backing onto the A40.

9. The Law

9.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

9.2 The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

9.3 Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

9.4 Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

9.5 Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Reasons for the Tribunal's decisions.

10. **Valuation date**

The tribunal accept Ms Muir's submission (with reference to the decision in *Calladine-Smith v Saveorder Ltd)* that for the purposes of section 39(8) of the Act the relevant date, and therefore the valuation date, is 30 September, being the date the landlord's solicitors received the notice and not the date upon which it might have been expected to have been received. They accept that the presumption that a notice is received on the day it would be delivered in the ordinary course of post (section 7 Interpretation Act 1978) is rebutted where the contrary is proved. In this case the tribunal is satisfied, on the evidence provided to them at the hearing, that it was only received by Wallace LLP on 30 September.

11. **Existing lease value**

11.1 **Comparables**

(a) The tribunal was concerned at the absence of a discernible pattern of value in the comparables offered to it by Mr Stacey, who provided a total of ten comparables of sales within one year of the valuation date (six months before and six months after that date). Of these Mr Stacey placed greater weight on six, in respect of which he had been able to obtain more information. However the tribunal was concerned that only one of these comparables was a one bedroom flat. (number 65 Connell Crescent).

(b) The tribunal therefore preferred Mr Sharp's approach of looking at two one bedroom flats (of which one was 65 Connell Crescent). The tribunal accept that comparables close to the valuation date provide the best evidence but there is no reason not to look at comparables more than six months from the valuation date if necessary, which they consider to be the case here. Mr Sharp's second one bedroom comparable (142 Connell Crescent) sold in August 2016 for £345,685.

11.2 **Indexation**

While both surveyors made use of land registry indices for Ealing to time adjust the comparable sale prices Mr Stacey used the Land Registry House price index while Mr Sharp used the land registry index for flats and maisonettes. Given that the property is in a street in Ealing where all the properties are flats or maisonettes the tribunal consider that it is more appropriate to use the index for flats and maisonettes. It notes and agrees with the valuers that whichever index was used to make little difference to the valuation but have adopted that used by Mr Sharp, as it is for flats and maisonettes.

11.3 **Adjustments to comparables**

(a) Mr Stacey provided the tribunal with a schedule which showed the estimated square foot price of each of these, time adjusted with reference to the Land Registry House Price Index. He made no other adjustment to the sale prices and, having undertaken the exercise which produced a value per square foot for the only one bedroom flat of £662.06 (compared to a value per square foot for his preferred five two bedroom flats of between £424.22 and £483.72) he then offered his unsubstantiated opinion that an appropriate value per square foot for a one bedroom flat was £600. He considered that the actual value achieved for 65 Connell Crescent (the only one bedroom flat) pointed to a higher market value for a one bedroom ground floor flat but considered that this value was also inexplicably high and therefore should be discounted.

(b) Mr Sharp submitted that the impact on value of the A40 on the properties on the north of the road was between 5.5% and 10% based on sales of comparable properties (time adjusted) on either side of the road. He suggested an approximate mid-point of 7.5% to be reasonable. Mr Stacey conceded that it was to the detriment of 65 Connell Crescent that it was on the north side of the road (paragraph 10.19 of his report) without making any adjustment to reflect this detriment, because he did not consider that it was borne out by his comparables.

(c) Mr Stacey did not adjust for condition. Mr Sharp adjusted the value of 65 Connell Crescent by £10,000 to reflect that it was newly refurbished.

(d) 142 Connell Crescent has an additional glazed side extension to the kitchen (of about 60 square feet) and also benefits from a brick built store with double glazing and electricity supply. Mr Sharp reduced the value of this comparable by 2.5% to reflect these additional features.

(e) The tribunal considers that it is necessary to make adjustments to the comparables to reflect floor area, condition, type of house within which the flat is located, and whether the comparable is on the north or south side of the road.

(f) From its own knowledge the tribunal considers it appropriate to adjust

(i) the sale price of 65 Connell Crescent (sold in September 2015 so that no time adjustment was necessary) of £335,000 to reflect that it had been newly converted (£20,000) and that it is in a semi-detached property (£7,500). The tribunal then took into account that this property is on the north side of the road, as it considers that this does impact on value (by reference to the 4.3% difference in sale prices achieved for properties sold on the north and south sides of the road to reach an adjusted price for this comparable of £320,723.

(ii) the time adjusted price of £345,685 for 142 Connell Crescent to reflect its specification, its glazed kitchen extension and brick built outbuilding with electricity by £25,000 to £320,685.

(g) An average of the above two adjusted comparables is £320,704.

11.4 **Relativity**

(a) Having regard to the decision in *Mundy* the correct starting point for the tribunal to determine the value of the existing lease without rights under the 1993 Act is a market transaction around the valuation date, rather than making adjustments to the extended lease/ share of freehold evidence.

(b) Neither valuer was able to find similar one bedroom transactions with the same unexpired term as the property.

(c) Mr Stacey offered as evidence the sale of two ground floor flats with two bedrooms sold in March 2016. 94 Connell Crescent sold for £303,000 with a lease of 154.28 years and 154 Connell Crescent sold for £297,500 with a 64.27 year lease. Mr Stacey submitted that the latter property would have sold for more had it been similar to 94 Connell Crescent and suggested that a reduction of 5% to reflect its less appealing features (an internal second bedroom and less attractive outlook). He then suggested an arbitrary deduction of 3.5% for the "no Act" world, resulting in a relativity of 90%.

He also compared the sale of 79 Connell Crescent (the surveyors disagreed as to effect of it having been initially marketed with a 26 year lease) and 63 Connell Crescent as evidencing a similar relativity of 90.75%.

The tribunal consider that Mr Stacey's market evidence appears to be flawed; as it indicates that both a long lease (no 94) and a short lease (no 154) sold in March 2016, with a differential of only £5,500, which suggests to the tribunal that both interests were in fact long leasehold interests. The tribunal are also concerned that Mr Stacey further market evidence (Nos 79 and 63) is of questionable assistance, given that it derives from Mr Stacey's own valuation of no 79 at £295,000.

(d) Mr Stacey then cross-checked his relativity of 90% against his preferred non PCL graphs relevant to suburban locations in Greater London, namely Moss Kaye, Nesbitt & Co and Pridell which produced an average relativity of 87.81% which is that which he submitted should be accepted by the tribunal.

The tribunal do not consider it appropriate to use the Moss & Kaye graph, as it is not included in the RICS 2009 basket of graphs.

(e) Mr Sharp took two other 2 bedroom examples. 79 Connell Crescent which sold on a 125 year lease with a geared (to capital value) ground rent for £375,000 in June 2016 and 83 Connell Crescent which sold for £315,000 with the same unexpired lease term and ground rent as the subject flat. These he time adjusted, making a further adjustment of 0.5% to 79 Connell Crescent to reflect its geared ground rent, and adjusting both by 1% to reflect that relativity is expressed as a percentage of the freehold value (Mr Stacey conceded that he had omitted to do this).

Mr Sharp then sought to remove the Act world from the lease of 83 Connell Crescent with a 10% discount arguing that this was the percentage adopted by the tribunal in *Mundy* and in numerous cases in which he had appeared before the first tier tribunal. He considered it appropriate to adopt the same percentage discount as in *Mundy* even though that was a shorter lease, as the location of this Property is more mortgage dependent than Cranley Gardens, the location of the subject property in *Mundy*.

(f) On the graphs of relativity Mr Sharp discounted them all except for Beckett & Kay. He argued for a relativity of 77.7% for 64.73 years unexpired based on market evidence alone and 79.84% based on a combination of market evidence, and the relativity graphs of Gerald Eve and Beckett & Kay.

The tribunal do not consider that the graphs Mr Sharp adopted are appropriate; Gerald Eve is a graph based on Prime Central London, and Beckett is mainly opinion based graph, and out of kilter with other RICS graphs.

(g) The tribunal have adopted elements of the approaches taken by the two surveyors.

(i) It prefers Mr Sharp's market evidence, as they consider Mr Stacey's market evidence to be flawed. That 94 Connell Crescent and 154 Connell Crescent both sold in March 2016 with a differential in price of only £5,500 suggests to the tribunal that they were both sold with the benefit of long leases.

(ii) It prefers the use of two of the graphs used by Mr Stacey in light of the absence of persuasive market evidence; namely those of Nesbitt and Pridell (showing relativities of 87.75% and 88.85% respectively). They have not referred to Moss Kaye, as this is not included in the RICS 2009 basket of graphs.

(h) Based on its own experience, and with reference to the Savill PCL report the tribunal considers an adjustment of 6% appropriate to reflect the "no Act" world. In *Mundy* an adjustment of 10% was made for the no Act world, in respect of a lease with an unexpired term of 41.32 years. This percentage should increase as the lease gets shorter, and should therefore be less than 10% in the present case, where the lease had an unexpired term at the valuation date of 64.73 years. This produces a relativity figure of 81.16%.

(i) The Tribunal have given equal weight to the two graphs produced by Mr Stacey and the adjusted figure produced from Mr Sharp's market evidence. The average of these three figures provides a relativity of 85.92%

Name: Judge Pittaway Date: 29 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).

APPENDIX A

90 Connell Crescent London W5 3BL

The Tribunal's Valuation

**Assessment of the premium for a lease extension
In accordance with Leasehold Reform, Housing and Urban Development Act 1993**

LON/00AJ/OLR/2016/0817

Components

Valuation date:	30th September 2015
Yield for ground rent:	6.0%
Deferment rate:	5.0%
Long lease value	£320,704
Freehold value	£323,960
Existing leasehold value	£275,549
Relativity	85.92 %
Unexpired Term	64.73 years

Ground rent currently receivable	£60	
Capitalised @ 6.0% for 5.75 years	4.7449	£285
Rising to:	£120	
Capitalised @ 6.0% for 33 years	14.230	
Deferred 5.75 years @ 6.0%	0.715	£1,221
Rising to:	£180	
Capitalised @ 6.5% for 26 years	13.002	
Deferred 33.2 years @ 6.5%	0.1046	£ 245
		£1,751

Reversion to:	£323,960	
Deferred 64.73 years @5%	0.0425	£13,768
Freeholder's Present Interest		**£15,519**

Landlords interest after grant of new lease		£323,960	
PV of £1 after reversion @ 5%	0.00053	£172	£15,347

Marriage Value

Freehold value	£323,960
Plus freehold reversion	172
	£324,132

Landlord's existing value	£ 15,519	
Existing leasehold value	£275,549	
	£291,068	
Marriage Value	£33,064	
Freeholders share @ 50%		**£16,532**
LEASEHOLD EXTENSION PREMIUM		**£32,051**