



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

Case reference	:	LON/00AX/OLR/2016/0653
Property	:	9 Blakes Lane, New Malden, Surrey KT3 6NP
Applicant	:	Pamela Mary Deacon, acting by her attorney, Alan George William Deacon
Representative	:	Russell-Cooke LLP, solicitors
Attendance, applicant	:	James Flynn FRICS
Respondents	:	Joanna Lea Maxwell & Charlotte Tracey Boughton
Representative	:	Teacher Stern LLP, solicitors
Attendance respondent	:	Douglas Struth MRICS
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Timothy Powell Mr Pat Casey MRICS
Date of determination and venue	:	6 September 2016 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	5 October 2016

DECISION

The tribunal's decision

The appropriate premium payable for the new lease is **£66,000**.

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 9 Blakes Lane and Garage, New Malden, Surrey KT3 6NP (the "property").
2. By a notice of a claim dated 7 September 2015, served pursuant to section 42 of the Act, the applicant exercised the 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 3 January 1964 for a term of 99 years from 25 September 1963 at an annual ground rent of £15. The applicant proposed to pay a premium of £50,960 for the grant of the new lease.
3. On 11 November 2015, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £75,000 for the grant of a new lease.
4. On 18 April 2016, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:
 - (a) The subject property is a self-contained two bedroom ground floor flat, with bathroom, kitchen, rear garden and garage;
 - (b) The valuation date: 8 September 2015;
 - (c) Unexpired term: 47 years (plus 18 days);
 - (d) Capitalisation of ground rent: 7% per annum; and
 - (e) Deferment rate: 5%.

Matters not agreed

6. The following matters were not agreed:
 - (a) The short lease value: the applicant contending at the hearing for £239,680 and the respondent contending for £260,909;
 - (b) The long lease value: the applicant contending for £320,000 and the respondent contending for £369,000;
 - (c) The marriage value; and
 - (d) The premium payable.

The hearing

7. The hearing in this matter took place on 6 September 2016. The applicant was represented by James Flynn FRICS, who spoke to his expert report and valuation dated 31 August 2016; and the respondent was represented by Douglas Struth MRICS, who spoke to his expert report and valuation dated 22 August 2016.

Inspection

8. The tribunal members inspected the subject property on the same day, after the hearing had taken place.
9. The property comprises a two-bedroom flat within a purpose-built development of three terraced buildings, each comprising four flats. It is considered that the development was built in the early 1960s. Each flat has the benefit of a lock-up garage to the rear.
10. The subject flat is situated within the middle building on the ground floor. It comprises a living room, two bedrooms, bathroom and kitchen. There is a garden directly accessible from both the living room and the kitchen. There is also a lock-up garage to the rear of the property. The flat has central heating and is in reasonable decorative order. According to Mr Flynn, the property has a gross internal floor area of 58.64 sqm.

Long lease value

11. In order to establish the long lease value, both experts relied upon the sale of similar flats in the same development, with adjustments as necessary, to allow for variations between properties. These factors were said to include size, age, condition (repairs), location, floor within the building, date of transaction (time) and length of lease.
12. For the applicant, Mr Flynn relied upon the sales of 19 Blakes Lane, 11 Blakes Lane, and 21 Blakes Lane, all of which are within the same development, have similar two-bedroom accommodation and similar floor areas. All have a garage within the development and all have extended leases. One difference between the properties is that 19 and 11 Blakes Lane are both at first floor level, whereas 21 Blakes Lane is at ground floor level.
13. Mr Struth, for the respondent, also relied upon these three comparable sales, but he included a fourth, namely the sale of 236 Malden Road, a property in the same development, comprising a similar style two-bedroom first floor flat, also with the benefit of a lock-up garage.

14. The basic details of the four comparables were not in dispute:

Address	Floor	Approx. lease length	Transaction date	Price
19 Blakes Lane	First	c.154 years	May 2014	£308,000
236 Malden Road	First	c.178 years	September 2015	£345,000
21 Blakes Lane	Ground	c.127 years	April 2016	£330,000
11 Blakes Lane	First	c.127 years	June 2016	£375,000

Mr Flynn's approach

15. Mr Flynn adjusted the three Blakes Lane sale prices for time, utilising the Land Registry House Prices Index at appendix 6 of his report, and then adjusted them for the cost of refurbishment, as appropriate.
16. In particular, Mr Flynn said that 11 and 19 Blakes Lane had been refurbished "to a high standard" with the replacement of the internal fittings and original windows. He said that these were major improvements compared with the condition of the original flats; and, therefore, he made an adjustment to the sale price of each of £20,000, to reflect the refurbishment, excluding redecorations and repairs.
17. When it was put to him that he had not claimed that any tenant's improvements should be disregarded, Mr Flynn said that while he had not used those words, it was clear from his report that he was claiming the subject property should be valued in its unimproved condition; but his report showed that it had, in fact, been improved by the tenant over time. In particular, he pointed to page 6 of his report, where he had said that he had to "assume all tenants works have been carried out to the subject property under the repair and decoration terms of the lease"; and that the long leasehold value he reached was of the property at the date of valuation "in an unimproved condition".
18. When asked why he had not included the fourth comparable at 236 Malden Road in his report, Mr Flynn said that he had felt that the Blakes Lane location was better.
19. Overall, Mr Flynn considered that the sale of 21 Blakes Lane was the best direct evidence of value of an unimproved flat, the sale taking

place some seven months after the valuation date. The only adjustment he made for the sale price of that flat was for the time, using the Index.

20. Having taken into account what he considered to be the nature of the likely potential purchaser for a property such as the subject flat, Mr Flynn concluded that the long leasehold interest of the flat at the date of the valuation, in unimproved condition, was £320,000.

Mr Struth's approach

21. For his part, Mr Struth considered that it was wrong to exclude the Malden Road comparable, since its date of sale was almost exactly that of the subject flat, the property was within the same development, it had been built at the same time and it was owned by the same freeholder. Mr Struth also criticised the House Price Index used by Mr Flynn to make time adjustments, which, he said, related to mixed houses and flats, whereas the Index that he had used for this purpose related to flats only.
22. When carrying out his adjustments to the comparable properties, Mr Struth made an adjustment of 5% for the Malden Road property, because of what he considered to be its poorer, noisier location, fronting the busier road. He also made adjustments of 5% in relation to the first floor properties, because he considered that the ground floor properties had easier access to the gardens.
23. Mr Struth disputed Mr Flynn's claim that 11 and 19 Blakes Lane had been refurbished "to a high standard". He pointed out that neither of the estate agents' particulars stated this to be the case; and that photographs of the flats provided all suggested that the fittings were "normal" for this type of flat. So far as he could see, the subject flat was in average condition; that all the pictures show was the modern equivalence of what would have been there in 1963; and one should expect tenants to comply with the repairing obligations under their lease. He assumed that when the property was developed there had been a heating system and that any changes made by the tenant were more in the nature of replacement, and not necessarily an improvement that fell to be disregarded. In any event, he did not believe there were any tenant's improvements that affected the valuation.
24. Mr Flynn disputed this strongly, saying that the lease obligation was just to keep the premises in repair and not necessarily to replace items. He did not know whether there had been a heating system in the subject flat originally, but the provision of the current combination boiler was certainly an improvement.
25. The only adjustment for repairs that Mr Struth made to the comparable sale prices was a £12,000 reduction in respect of 21 Blakes Lane, which,

he said, was the cost to put in a very basic kitchen, being the factor why this property was on the market and did not sell for so long.

26. Mr Struth had averaged the four unadjusted prices at £339,500. Having taken into account his adjustments (including for an onerous ground rent, which adjustment was withdrawn at the hearing), his adjusted average long lease value was £369,000.

The tribunal's decision

27. The tribunal determines that the long leasehold value is £353,000.

Reasons for the tribunal's determination

28. The tribunal considered that it was right to include the fourth comparable, 236 Malden Road. This property sold on the same date as the subject property, it was within the same development, built at the same time and with the same freeholder. From the inspection, the property was clearly in a busier and nosier location than nearby Blakes Lane and, therefore, the tribunal is happy to accept a 5% adjustment to the sale price to reflect location.
29. With regard to the adjustments for time, the tribunal preferred Mr Struth's Index of flat sales, to Mr Flynn's Index of sales of both houses and flats.
30. The tribunal did not consider that there was any significant valuation difference between floor levels. The gardens at the rear were fairly small, being placed one behind the other. While the ground floor flat had direct excess to the garden, it suffered from a reduction in size in one of its rooms to accommodate the internal staircase to the first floor flat. The first floor flat therefore benefitted from a larger footprint, with one of its rooms being slightly bigger. Taken together, the tribunal considers that these two factors balance each other out.
31. As mentioned above, Mr Struth conceded that he should not have made an adjustment for onerous ground rents, so that is ignored by the tribunal.
32. With regard to the condition adjustments, the tribunal felt that the £12,000 selected by Mr Struth in respect of 21 Blakes Lane was a rather too-precise figure. While the photographs of the flat showed it to be in a rather shabby condition and the letter from new leaseholders to the freeholder, dated 8 June 2016, makes reference to "modernisation", the nature of the works is not known (although the tribunal suspects that they are necessary). Ideally, the tribunal would have wanted to inspect 21 Blakes Lane internally, but, relying on the photographs, would say that a rounded £10,000 was more appropriate as a repair adjustment.

33. However, the tribunal was not happy to accept Mr Flynn's £20,000 adjustment for the condition of the subject flat, as compared with the refurbished comparable flats. Although Mr Flynn had valued the subject flat in its unimproved condition, he had not made any claim that specific tenants' improvements should be disregarded in the valuations. Be that as it may, the tribunal inspected the subject flat and compared its condition with the photographs of the two refurbished comparables, nos. 11 and 19 Blakes Lane. Having done so, the tribunal found no appreciable difference between the conditions of the three flats. Although Mr Flynn claimed that nos. 11 and 19 Blakes Lane had been "refurbished to a high standard", neither the estate agents' particulars claimed this; and nor did they say that the comparable flats had been "newly refurbished". It is quite possible that any such refurbishment took place 5 or 10 years ago, in which case it would not be worth anything in valuation terms.
34. Accordingly, the tribunal found that there was no difference between the fully refurbished comparable flats and the subject property; that there had been a failure to put to the landlord any claims for tenant's improvements to be disregarded; and Mr Flynn's submissions on condition ignore the fact that repairs can be done by replacement.
35. Taking into account the 5% location adjustment for 236 Malden Road and the £10,000 repairs adjustment for 21 Blakes Lane, together with indexation from the date of claim according to Mr Struth's Index, the averaged long lease value determined by the tribunal is £353,000.

Freehold value

36. In his valuation calculations, Mr Struth made a 1% variation between the long leasehold and freehold values. When asked for his justification for this, he said that it was his practice to make such a variation; in contrast to Mr Flynn, who said that he was not a fan of the 1% difference.
37. Ordinarily, the tribunal would accept that there was a 1% difference; although there was no evidence for it at this location. Nonetheless, the tribunal thinks it is appropriate to include the percentage difference in the valuation calculation in this case, because it is generally accepted by practitioners that there is a benefit to owning a share of freehold, i.e. it provides a degree of control and flexibility beyond leasehold ownership.
38. The tribunal therefore determines that the freehold value is £356,500.

Short lease value

39. Mr Flynn said there was no evidence of short leasehold values. Therefore, he relied on relativity graphs prepared by a number of surveying companies, which he said were useful in assessing short lease value as a proportion of the long lease value. In appendix 7 of his report, he provided the "My Leasehold" relativity graphs, with his comments on them. These appeared in four tables, summarised as follows:

Grouping	Average relativity	Value of Act rights
2009 RICS Prime Central London	72.31%	9.58%
2009 RICS Greater London & England	71.90%	-
Published Research	(76.58%)	-
2015 Data	72.02%	9.99% (Savills)

40. Of all the graphs relativity, Mr Flynn selected those which clearly reflected previous tribunal determinations because, he said, these were cases where tribunals had heard evidence and had gone through a proper process before reaching a conclusion as to relativity. He had selected three graphs from the "Published Research" grouping, namely: the Tribunal Graph, the Moss Kaye graph and the Leasehold Advisory Services graph, whose relativities were 73.23%, 74.85% and 76.64% respectively. Together, these three gave an average relativity of 74.95%, being the figure adopted by Mr Flynn in his report.
41. At paragraph 7.24 of his report, Mr Struth started by considering the "real world" sale of a short lease within the same development, namely the sale of flat 1A Blakes Lane in September 2013. At the time, the lease had approximately 49 years unexpired and, after adjustments and by comparison with no. 19, he arrived at relativity for no. 1A of 61%. Mr Struth then took the subject lease of 47 years unexpired and the average 71.90% relativity produced by the average of the 2009 RICS Greater London and England relativity graphs. Once the South East Leasehold graph was removed from the grouping, being, Mr Struth said, "the most extreme", this produced an average relativity of 70.11%; still well above the relativity that the sale of flat 1A Blakes Lane indicated. Finally, for his valuation, Mr Struth adopted 70% relativity, arguing that the real world transaction supported the use of lower end of the relativity graphs, a contention disputed by Mr Flynn during the hearing.

The tribunal's decision

42. The tribunal determines that the short lease value is £256,680, being 72% of the freehold vacant possession value.

Reasons for the tribunal's determination

43. Mr Struth looked for real world evidence in support of the relativity and found a short lease sale. Although the Tribunal did not consider his 5% deduction for Act rights to be excessive, the resulting 61% relativity is too low and too far out from what the tribunal would expect from a consideration of the relativity graphs. Had the sale of no. 1A been corroborated by other short lease sales, the tribunal may have been in a position to give it further weight; but, on its own, the tribunal considers it to be unreliable.
44. The tribunal did not accept Mr Flynn's approach. The Upper Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2006] EWLands LRA/72/2005 (31 October 2006), and in other decisions, has made it clear that tribunal decisions on relativity are of no evidential value in subsequent proceedings (see paragraphs 37 and 38 of *Arrowdell*); and so far as the tribunal is aware, the Moss Kaye graph has never been accepted by the profession; and it was withdrawn by its creator many years ago.
45. Although Mr Struth's approach of taking a basket of four 2009 RICS Greater London and England graphs has attractions, the tribunal preferred to link the average relativities of the two 2009 and the 2015 groupings. These were all fairly consistent; and the advantage of taking the three groupings is that one is not really averaging them, but rather looking at a consensus view of the profession over time and location, where the average relativity for a 47-year lease is 72%.
46. The tribunal was not content to adopt Mr Struth's 70%. That relativity, for a property in New Malden, was lower than the 71.64% produced by the Gerald Eve graph which, in the recent Upper Tribunal decision of *The Trustees Of The Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC) (10 May 2016), was said to be "the industry standard". That should have been sufficient for Mr Struth to question why his relativity was lower; and whether it was at the correct level.
47. Overall, the three groupings represented about a dozen different firms all looking very broadly at the same unexpired term and producing broadly similar figures. Therefore, doing the best that it can on the evidence available and the graphs of relativity, the tribunal considers that the appropriate relativity is 72% and that the short lease value is therefore £256,680.

The premium

48. The Tribunal determines the appropriate premium to be **£66,000**. A copy of its valuation calculation is annexed to this decision.



Name: Judge Timothy Powell

Date: 5 October 2016

Appendices:

1. Comparison table of the tribunal's adjustments to long lease sale prices;
2. 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).

**Leasehold Reform Housing and Urban Development Act 1993
(as amended)
9 Blakes Lane New Malden Surrey KT3 6NP and Garage
Comparison table of the tribunal's adjustments to long lease sale prices**

Address	Floor	Approximate Lease Length	Transaction Date	Price	Add for location @ 5%	Add/subtract for repairs	Adjusted price before indexation	% Indexation from Date of Claim	Adjusted price after indexation
19 Blakes Lane	First	C 154 years	May-14	£308,000	£0	£0	£308,000	18.93%	£366,304
236 Malden Road	First	C 178 years	Sep-15	£345,000	£17,250	£0	£362,250	0.00%	£362,250
21 Blakes Lane	Ground	C 127 years	Apr-16	£330,000	£0	£10,000	£340,000	-3.54%	£327,964
11 Blakes Lane	First	C 127 years	Jun-16	£375,000	£0	£0	£375,000	-5.77%	£354,542
								Average	£352,765
								Say	£353,000

LON/00AX/OLR/2016/0653

**Leasehold Reform Housing and Urban Development Act 1993
(as amended)
9 Blakes Lane New Malden Surrey KT3 6NP and Garage
Calculation of Premium Payable on Grant of New Lease**

Valuation date	8 September 2015		
Value of Freeholder's present interest			
Ground rent (pa)	£15		
YP 47.05 years @ 7%	<u>13.694</u>	£205	
Reversion to vp value	£356,500		
PV£1 def. 47.05 years @ 5%	<u>0.1007</u>	<u>£35,900</u>	£36,105
LESS			
Value of Freeholder's proposed interest			
Reversion to vp value	£356,500		
PV£1 def. 137.05 years @ 5%	<u>0.0012</u>	<u>£428</u>	£35,677
PLUS			
50% marriage value			
Lessee's proposed interest	£353,000		
Freeholder's proposed interest	<u>£428</u>	£353,428	
LESS			
Lessee's present interest (@ relativity of 72% of freehold vp)	£256,680		
Freeholder's present interest	<u>£36,105</u>	<u>£292,785</u>	
		<u>£60,643</u>	<u>£30,321</u>
50% Marriage Value			<u>£65,998</u>
			But say £66,000