



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

Case reference : LON/00BH/OLR/2015/1447

Property : 101 Seymour Road, London E10
7LZ (“the flat”)

Applicant : Burney Realty Limited (“the
tenant”)

Representative : MLC Solicitors

Respondent : Daejan Estates Limited (“the
landlord”)

Representatives : Wallace LLP, solicitors

Type of application : A new lease claim

Tribunal members : Angus Andrew
Helen Bowers BSc (Econ) MSc
MRICS

**Date and Venue of
hearing** : 19 January 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 10 February 2016

DECISION

Decision

1. The extended lease value of the flat at the agreed valuation date was £310,635.
2. Relativity of 66.48% is to be applied to calculate the existing short lease value of the flat.
3. The price to be paid for the new extended lease is £66,180 in accordance with our attached valuation.

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. We heard the application on 19 January 2016. The tenant was represented by Rahul Varma and the landlord by Nicola Muir, both of whom are barristers. We heard evidence from the parties' expert witnesses. Mr Timothy Henson BSc, MRCS gave evidence on behalf of the tenant whilst Robin Sharp BSc, FRICS gave evidence on behalf of the landlord. On the following day we inspected the flat and the exterior of the comparable flats referred to in this decision. During the inspection we were not accompanied by the parties or their representatives although the tenant's sub-tenant gave access to the flat.

Background

6. The flat is one of a large number of similar flats that comprise the Warner Estate, which pre-dates the First World War. The properties have the appearance of small terraced houses but comprise two purpose built flats on the ground and first floors all with their own front doors. A small number of the properties on the estate front Lea Bridge Road. However the majority front a number of parallel roads that run from Lea Bridge Road one of which is Seymour Road.
7. From the front door a passage provides access to a living room, 2 bedrooms, a kitchen and bathroom. A door from the kitchen gives access to a small rear garden. The flat is un-modernised and has not been refurbished.
8. The tenant holds the ground floor flat under a lease granted in 1971 for a term of 99 years from 25 December 1963. The landlord holds both the flat and the one above under a head-lease granted in 1910 for a term of 1,000

years and is the competent landlord for the purpose of the Act. The freehold reversion is owned by Northumberland & Durham Property Trust Limited but they played no part in the proceedings.

9. On 2 March 2015 the tenant gave notice of its claim to extend its lease. On 11 May 2015 the landlord gave a notice in reply admitting the claim. On 25 August 2015 the tenant made its application to the tribunal.

Issues in dispute

10. The parties had agreed the following:-

- a. The valuation date at 5 March 2015
 - b. An unexpired term of 47.806 years
 - c. A deferment rate of 5%
 - d. A capitalisation rate of 6.50%
 - e. The gross internal area at 640 square feet
 - f. A 1% uplift from the extended lease value to the freehold value
 - g. The terms of the new extended lease.
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 Henson on behalf of the tenant contended for an extended lease value of £294,500 and relativity of 75.25%. Mr Sharp contended for an extended lease value of £324,500 and relativity of 61%.

Mr Hensons' approach

13. In considering the extended lease value Mr Henson limited the comparable evidence on which he relied to sales within 3 months of the valuation date to avoid significant time adjustments. He identified 6 sales but all of them were first floor flats. 112 Seymour Road sold for £325,000, 66 Morieux Road for £347,000, 272a Lea Bridge Road for £274,500, 56 Bloxhall Road for £290,000, 5 Kettlebaston Road for £290,000 and 58 Clementina Road for £333,000.
14. He made some minor adjustments for time using the Land Registry Waltham Forest index. He made no adjustments for size on the basis that 2 bedroom flats were effectively a commodity on the Warner Estate and the market would not recognise the relatively small size differences.
15. He then made a number of more subjective adjustments. It was common ground that first floor flats on the estate were more valuable than ground floor flats although no empirical evidence was produced to verify the price differential. Mr Henson simply reduced all of the sale prices by £5,000 to reflect the disadvantage of a ground floor flat.

16. He then adjusted for condition. He considered that the flat was in “average” condition and he drew a comparison with flats that had been refurbished some years ago and those that had been recently refurbished to a high standard. Where a comparable flat had been refurbished some time ago he reduced the sale price by £10,000: where it had been recently refurbished to a high standard he reduced the sale price by £25,000.
17. He made an upward adjustment of 10% to 272a Lea Bridge Road to reflect the perceived disadvantage of its position on a busy main road. A £10,000 downward adjustment to 58 Clementia Road was withdrawn at the hearing.
18. An average of these adjusted sale prices produced a rounded figure of £296,261 that Mr Henson adopted as the extended lease value.
19. In adopting relativity of 70.25% Mr Henson relied principally on market evidence. He had identified 5 short lease sales on the Warner Estate all of which had completed within 4 months of the valuation date. 15 Bloxhall Road with a lease length of 72 years had sold for £285,400, 1 Bloxhall Road with a lease length of 48 years had sold for £210,000, 1 Kettlebaston Road with a lease length of 55 years had sold for £240,000, 226 Lea Bridge Road with a lease length of 44 years had sold for £215,000 and 57 Morieux Road with a lease length of 47 years had sold for £170,000.
20. Mr Henson then made similar adjustments to those described above. An average of the adjusted prices produced a rounded figure of £221,600. A comparison with the adopted long lease value suggested a relativity of 75.25%.
21. Mr Henson then considered both the graphs in the October 2009 RICS research report and the graph of tribunal decisions that indicated relativities of 73.06% and 73.68% respectively. He also had regard to two settlements of which he was aware that indicated relativities of 70.70% and 72.50% for lease lengths of 47.66 years and 56.42 years respectively.
22. Having considered this evidence Mr Henson discounted the market based relativity of 75.25% by 5% to reflect the value of the rights granted by the Act and concluded by adopting relativity of 70.25%.

Mr Sharp's approach

23. Mr Sharp limited the comparable sales on which he relied to 2 bedroom ground floor flats and he disregarded sales in Lea Bridge Road, which he considered to be an inferior environment. He identified 5 sales within a few months of the valuation date. 39 Kettlebaston sold for £300,000, 19 Seymour Road for £330,000, 15 Perth Road for £292,500, 110 Morieux Road for £336,780 and 16 Perth Road for £355,000.

24. As with Mr Henson he adjusted for time using the Land Registry Waltham Forest index. He then made a number of adjustments for both size and condition although it was difficult to identify a consistent approach to the adjustments. Certainly the size adjustments were not directly proportional to the areas of the flats. "Sitting back" from the adjusted evidence he concluded that £325,000 "fairly" represented the extended lease value and he reduced that sum by a further £500 because the lease was granted in 1971.
25. Mr Sharp's evidence on relativity was discursive and it was often difficult to understand either the relevance of some of his evidence or the reasoning behind his ultimate conclusion. He quoted at length from a report that he prepared on 194 Lea Bridge Road and he clearly relied on the sale of a 45.60 year lease in Lea Bridge Road in May 2014 for £175,000 which he had reduced by 12% to reflect the value of the rights granted by the Act. He concluded that the market evidence in Lea Bridge Road suggested a relativity of 61.60%.
26. In discounting for the Act rights he relied in particular on a number of tribunal decisions and also on 38 Cadogan Square [a reference to The Earl Cadogan, Cadogan Estates Limited v Cadogan Square Limited [2011] UKUT 154 (LC)] whilst accepting that Cadogan Square was in a very different location.
27. He also referred to the relativity graphs in the October 2009 RICS research report and also the London Tribunal graph but concluded that they were of secondary importance in this location. It was however apparent that he placed particular reliance on the 2014 Becket and Kay mortgage dependant graph that suggested a relativity of 60% although he rather undermined that graph by asserting that leases of less than 70 years are now nearly always bought for cash and are thus not mortgage dependant. It is perhaps unfortunate that he neither identified the data set that underpinned the 2014 Becket and Kay graph nor did he provide that firm's narrative explanation that would have been published with the graph.
28. In his concluding remarks he placed particular reliance on the local evidence and the Becket and Kay graph in contending for a relativity of 61%.

Reasons for our decisions

Extended lease value

29. We reject all Mr Henson's comparable sales because they were all first floor flats and required a subjective adjustment that was unsupported by any evidence. Indeed we found his reliance on first floor comparables surprising given his evidence that there were probably another 40 sales in 2015 on the Warner Estate that could have been considered.

30. Turning to Mr Sharp's comparable sales we reject 39 Kettlebaston Road because it is considerably smaller than the flat and the second bedroom is little more than a box-room so that it cannot accurately be described as a two bedroom flat.
31. In general terms we agree with Mr Henson that two bedroom flats on the Warner estate are a commodity and that it is unnecessary to adjust the sales of essentially similar flats for size. In adjusting for time we have adopted the Land Registry Waltham Forest index used by both experts.
32. It then only remains necessary to adjust for condition. Again we preferred the approach of Mr Henson for each of two reasons. Firstly because his adjustments were more transparent when contrasted with those of Mr Sharp who often applied a composite adjustment for more than one criterion. Secondly because the low sale price of 15 Perth Road, which required no condition adjustment, indicated that Mr Henson's more generous condition adjustments were to be preferred. We did consider relying on the 15 Perth Road sale alone but rejected that approach because there are always dangers in relying only on one comparable sale that, as Mr Sharp suggested, might be out of line.
33. Our analysis of the relevant comparables is set out in the following table. As will be seen it indicates an extended lease value for the flat of £310,635.

Property	Price	Time adjusted	Condition	Condition adjustment	Adjusted price
19 Seymour Road	330,000	331,890	Newly refurbished	25,000	306,890
15 Perth Road	295,500	294,176	Basic	0	294,176
110 Morieux Road	336,780	331,608	Newly refurbished	25,000	306,608
16 Perth Road	355,000	344,868	Refurbished	10,000	334,868
				Average	£310,635

Relativity

34. As His Honour Judge Reid QC commented in the Cadogan Square case the problem of relativity "*seems to be intractable*" and that may well explain the discursive nature of Mr Sharp's evidence. We are equally mindful that the Upper Tribunal, when determining relativity, has usually considered all the available evidence. As Judge Reid QC commented in the same case "*In both Arrowdale and Nailrile the Tribunal did the best it could with the evidence of transactions, even though such transactions took place in the Act world. It also had regard to graphs of relativity. These two leading*

cases did not opt for one approach in preference to the other; they considered all the available evidence.”

35. That said we do have considerable difficulty with other tribunal decisions. All such decisions are based on the evidence put before the tribunal and cannot in themselves be evidence of relativity. The point is illustrated by the two cases that we heard on 19 January 2016 of which this is one. In the other case there was no relevant evidence of short lease transactions and we had to rely largely on the relativity graphs referred to by Judge Reid QC. In this case there is relevant market evidence that must inform our decision.

36. We reject both experts’ use of short lease sales in Lea Bridge Road because as Mr Sharp observed, in the context of the extended lease value, flats on that road are not comparable with flats on the remainder of the Warner Estate that is a superior location. We also reject Mr Henson’s use of 15 Bloxall Road because the lease was for a term of 72 years in contrast to the flat lease that has only 48 years left to run. Finally we have reservations about 57 Morieux Road that was sold off market at a very low price in unknown condition.

37. Our analysis of the remaining two market transactions is set out in the following table. On this occasion we have admitted the first floor flat at 1 Bloxall Road to avoid relying on only one sale and we accept the adjustment of £5,000 proposed by Mr Henson.

Property	Price	Time adjusted	Condition	Condition/ floor adjustment	Adjusted price
1 Bloxall Road	210,000	210,000	Newly refurbished and first floor	30,000	180,000
1 Kettlebaston Road	240,000	233,300	Basic	0	233,300
				Average	£206,650

38. Thus a comparison of the short lease value with the extended lease value indicates a relativity of 66.53%. However that relativity is based on sales that include the rights granted by the Act. A discount has to be applied to reflect the value of those rights. Mr Henson suggested a deduction of 5% that would indicate a no Act world relativity of 61.53%.

39. Mr Sharp said that the Cadogan Square case supported a deduction of 9.20% but he conceded that that case relates to Prime Central London, which is usually considered to be a completely different market. He

ultimately suggested a deduction of 12% that would indicate a no Act world relativity of 54.53%.

40. We prefer Mr Hanson's deduction because Mr Sharp's evidence put relativity at 61% and it would be wrong in principle to go below that floor.
41. The relevant market evidence consists of only two relevant short lease sales and they are not consistent. Consequently it is appropriate to give equal weight to the relativity graphs that were taken into account in the Upper Tribunal decisions referred to by Judge Reid QC.
42. An average of all 5 RICS graphs gives relativity of 73.06% whilst the 2014 Becket and Kay graph gives relativity of 60%. The market evidence tends to support the 2014 Becket and Kay graph and also gives some credibility to Mr Sharp's assertion that relativity has reduced as mortgagees have tightened their lending restrictions on short leases. However given the absence of any coherent explanation for the 2014 Becket and Kay graph it would not be reasonable to rely on it to the exclusion of the other graphs.
43. Furthermore all relativity graphs commonly used are open to criticism for the reasons stated in the RICS report. Perfect evidence of short lease values in a "no act" world is no longer available. In such circumstances we prefer to consider a number of graphs because that approach reduces the risk of relying on one alone that may be fundamentally flawed.
44. Consequently we have substituted the 2014 Beckett and Kay graph for the earlier Beckett and Kay graph. Having made that substitution we have taken an average of all 5 RICS graphs that gives a relativity of 71.44%.
45. We are therefore left with a range in relativity from 61.53% to 71.44% and adopt an average of 66.48%.

Conclusion

46. Adopting the extended lease value of £310,635 and relativity of 66.48% we calculate the price to be paid for the extended lease at £66,180 in accordance with our valuation attached to this decision.

Name: Angus Andrew

Date: 10 February 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).

Freeholder's Present Interest**Term**

Term

Rent Reserved £15.75

YP to 1st review 47.806 years @ 14.627

6.5%

£230

Reversion

FH reversion £313,773

PV of £1 in 47.806 years @ 5% 0.0971£30,467

£30,697

less

Freeholder's Proposed Interest

FH reversion £313,773

PV of £1 in 137.806 years @ 5% 0.0012£377

£30,320

Marriage value

Proposed

Extended lease value £310,635

FH in reversion £377

less

Existing

Freeholder's Interest £30,697

Short lease value £208,596

Marriage Value

£71,719

50:50 division

£35,860**Premium for lease extension****£66,180**