



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

Case Reference : LON/00AX/OLR/2016/0697

Property : 16 Sopwith Avenue, Chessington, Surrey,
KT9 1QE

Applicant : Mortaza Bijon Ramazani

Representative : Andrea Christou MA MRICS

Respondent : Sinclair Gardens Investments (Kensington)
Limited

Representative : Geoff Holden FRICS

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Charles Norman BSc FRICS

**Date and venue of
Hearing** : 31 August 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 29 September 2016

DECISION

(i) The Tribunal determines that the premium payable by the Applicant in respect of the extension of his lease at 16 Sopwith Avenue, Chessington, Surrey, KT9 1QE is £30,236.

(ii) We have determined that the relativity rate is 81.65%.

Introduction

1. This is an application made 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 and the terms for a new lease.

Background

2. The background facts are as follows:

- (i) The flat: 16 Sopwith Avenue, Chessington, Surrey, KT9 1QE;
- (ii) Date of Tenant's Notice: 1 October 2015;
- (iii) Valuation Date: 1 October 2015;
- (iv) Date of Application to the Tribunal: 25 April 2016;
- (v) Tenant's leasehold interest:
 - Date of Lease: 17 July 1981;
 - Term of Lease: 99 years from 1 December 1980, with an unexpired term of 64.17 years;
 - Ground Rent: Onerous rent clause (see below);
- (vi) Landlord: Sinclair Gardens Investments (Kensington) Limited;
- (vii) Tenant: Moraza Bijon Ramazani;
- (viii) Tenant's Proposed Premium: £21,168;
- (ix) Landlord's Proposed Premium: £31,145.

The Hearing

3. The hearing of this application took place on 31 August. The Applicant, tenant, was represented by Mr Andreas Christou, MA MRICS. The Respondent, landlord, was represented by Mr G P Holden FRICS. Both experts had provided written reports. Both also acted as advocates. We are grateful to the two experts for the assistance that they provided to the Tribunal.
4. On 1 July 2016, the parties agreed to the following:
 - (i) The subject flat is on the third floor and comprises a bedroom, lounge, kitchen, bathroom, hallway and storage area. The GIA is 463 sq ft. There is the use of a car parking space.
 - (ii) Valuation Date: 1 October 2015;
 - (iii) Unexpired Term: 64.17 years.
 - (iv) Deferment Rate: 5%;
 - (v) The unimproved freehold possession value of the flat: £202,225;
 - (vi) Uplift from long leasehold to virtual freehold: 1%;
 - (vii) Future Ground Rents: £775pa/£1,412pa/£2,574pa.
 - (viii) Capitalisation Rate: 5.5%.
5. The Tribunal were informed that there were three issues in dispute:

(i) The future ground rents: Mr Christou sought to withdraw his agreement and re-open the future ground rent issue. We dealt with this as a preliminary issue.

(ii) The appropriate rate for relativity: Mr Christou contends for 88.50%; Mr Holden for 80.75%;

(iii) Whether a 1% differential is appropriate between the unimproved extended lease and the unimproved vacant possession value: Mr Christou contends for a 1% differential; Mr Holden contends for no differential.

Issue 1: Future Ground Rent Increases

6. Clause 7(ii) of the lease provides: "The annual rents hereby reserved in respect of the Premises shall be: (a) During the first rent period £55; (b) During each rent period thereafter the rent reserved during the preceding rent period or a one two-hundredth part of the value of the Premises on the relevant date whichever shall be the greater". The phrase "rent period" means one of such successive periods of twenty one years or fifteen years in the case of the last such period.
7. The Statement of Agreed Facts signed by both experts on 1 July 2016 reads as follows: "Future ground rents increases: £775pa/£1,412pa/£2,574pa". Mr Holden described how Mr Christou had sent him the first draft of the Agreed Facts. He had made a number of alterations which Mr Christou had agreed. He had made no alterations to the section on future ground rents as he was content to agree what Mr Christou had proposed. Both experts had then signed the agreed document.
8. The experts exchanged their reports shortly before the hearing. Mr Holden's report is dated 22 August whilst that of Mr Christou is dated 23 August. Attached to Mr Christou's Report is a new Statement of Agreed Facts and Matters in Dispute. This now suggests that the future ground rents are a matter in dispute. It now reads:

"Mr Christou believes it does not increase over the period of the lease;

Mr Holden believes it is £952pa/£1,339.58pa/ £1,459.85pa".

Mr Christou reduced his calculation of the premium from £21,168 to £18,719 (see p.179). Mr Holden's Valuation is at p.229. His computation of the premium remains at £31,145. It is based on the future ground rents which were specified in the original Statement of Agreed Facts.

9. Mr Christou applied to withdraw his agreement as to the future ground rents as recorded in the Agreement dated 1 July 2016. He stated that he had re-read the lease. He now considered that when he had proposed the

future ground rent increases, he had had inadequate regard to the declining lease term on each of the rent review dates.

10. Mr Holden responded that were the Applicant to be permitted to resile from the agreement, he would need to seek an adjournment so that he could properly address the new issue that had been raised. He had been given no intimation that Mr Christou was minded to change his position. He only became aware of this when he read Mr Christou's report. Were the matter to be adjourned, the Respondent would expect the Applicant to pay the costs thrown away.

11. The Tribunal refused Mr Christou's application on the following grounds:

(i) We are satisfied that it would be wrong to allow Applicant to resile from the facts that had been agreed on 1 July. Mr Holden had had no reason to realise that an error had been made by Mr Christou. Mr Christou had indicated his professional opinion as to the future ground rents and Mr Holden had been ready to accept this.

(ii) Had we been minded to allow Mr Christou to resile from his agreed position, we would have had no option by to accede to Mr Holden's request for an adjournment. We would have expected the Applicant (or his professional advisors) to pay the costs thrown away. The effect of the adjustment that Mr Christou is now minded to make would have reduced the premium payable by some £2,400.

(iii) It would be disproportionate to adjourn the case to enable the new point to be addressed. We had regard to the overriding objectives in Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013. We must deal with cases in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of both the parties and the Tribunal. We must also seek to avoid any unnecessary delay.

Issue 2: Relativity

12. The following guidance on relativity is provided by the learned editors of "Hague on Leasehold Enfranchisement" (6th Ed, 2014) at [33.17]:

"The assessment of the value of the tenant's existing lease is often problematic. Sales of flats in the locality on leases of a comparable unexpired term will invariably be "tainted" by being sold with 1993 Act rights, which have to be disregarded. If there is evidence of sales of flats in the locality on very long leases, valuers can assess the value of the flat on its existing lease by taking a proportion of the long lease value. The relative value of a lease when compared to one held on a very long term varies with the unexpired term. This "relativity" has not proved easy to establish.

A number of organisations publish tables or graphs of relativity, representing their views, which views may be based on market transactions, settlements, expert opinion and/or tribunal decisions. This topic was recently considered in detail by the Lands Tribunal (in *Nailrite Ltd v Cadogan* [2009] 2 E.G.L.R. 151). It held that relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity (see *Nailrite Ltd* [2009] 2 EGLR 151 at [228] applying the guidance of the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] R.V.R. 39)."

13. The Upper Tribunal ("UT") has now given further guidance in the decision of *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC). The three cases considered by Mr Justice Morgan and Mr Andrew Trott FRICS involved Prime Central London. At the end of an extensive and learned judgment, the UT gave guidance for future cases at [164] – [170]. We highlight [168]:

"Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act."

14. The UT also considered the benefit of rights under the Act:

"127. In his opening submissions, Mr Jourdan for the lessor of Flat 5 described the benefit of rights under the Act in this way: "Act rights are valuable, for a number of reasons. The tenant has the right, at a time of his choosing, to serve a notice claiming a new lease. He can buy the lease of the flat he wants paying, in effect, only part of the price immediately, with a further payment due at a time of his choosing. The price is fixed on a basis which excludes the tenant's overbid whilst guaranteeing him 50% of the marriage value. He has the right to have the price determined by an independent tribunal, and is not at risk as to costs (unless he acts unreasonably). If the claim proceeds, it can take a considerable time before the price is paid, during which period he pays no interest but only the ground rent. If property prices go up, he keeps the increase in the price after the valuation date. If prices go down, he can withdraw the notice and serve another one a year later. The price is determined on a basis which disregards any effect of improvements, so meaning that he can make

improvements which might not be economic if he held only an unenfranchiseable lease.”

128. We did not understand Mr Rainey to disagree with this description of rights under the Act. We agree that the Act confers these substantial benefits on lessees who qualify under it.”

“135. We were referred to a number of tribunal decisions on the subject of the amount of the deduction to be made to reflect the absence of rights under the Act. In *Trustees of the Eyre Estate v Saphir* [1999] 2 EGLR 123, the Lands Tribunal (Mr Rose) accepted a valuer’s evidence that the deduction should be 10% where the unexpired term was 37.7 years. In *Chelsea Properties Ltd v Earl Cadogan* LRA/69/2006, decision dated 16 August 2007, the Lands Tribunal (Judge Huskinson and Mr Rose) accepted a valuer’s evidence that the deduction should be 15% where the unexpired term was 18.7 years. In *Lalvani v Earl Cadogan*, reported with other cases as *Nailrile Ltd v Earl Cadogan* [2009] RVR 95, the Lands Tribunal (Mr Bartlett QC, President, and Mr Trott) accepted a valuer’s evidence that the deduction should be 7.5% where the unexpired term was 44 years. In *Earl Cadogan v Cadogan Square Ltd* [2011] 3 EGLR 127, the Lands Tribunal (Judge Reid QC and Mr Trott) held that the deduction should be 25% where the unexpired term was 17.8 years. In this last case, the Lands Tribunal carried out at [79] a comparison between the real world relativity, as shown by the Savills 2002 graph, and the relativity for leases without rights under the Act, as shown by the Gerald Eve graph, and pointed out that if the graphs could be relied upon then the difference between the relativities should disclose the appropriate deduction for the absence of rights under the Act for a lease of any particular length. If one were to do that exercise for an unexpired term of 40 years (a figure which is provided in [79] of the decision in that case and which is only a little less than the unexpired term of 41.32 years in the case of Flat 5) the deduction for the absence of rights under the Act would be 12.2%. We will have more to say about the use of the various graphs later in our decision.

136. The four decisions of the Lands Tribunal referred to in 135 above were all before the valuation date in the case of Flat 5. Following that date, the Upper Tribunal has *decided 82 Portland Place (Freehold) Ltd v Howard de Walden Estates Ltd* [2014] UKUT 0133 (LC) (Mr Rodger QC, Deputy President, and Mr Trott) where it determined a deduction of 20% for an unexpired term of 11.82 years.”

Submissions of the Parties

15. Mr Christou argues for a relativity of 88.5%. His calculation is set out in a table at p.83. He relies on eight comparables, three of which are short leases (64-65 years), namely Flats 11, 16 and 18, and five of which are long leases (four being 154-155 years and one of 86 years), namely Flats 37, 39, 41, 42 and 43. He makes adjustments for time, improvements and a 2.5% reduction if the flat is on the ground floor. The average adjusted short lease value is £169,722 and long lease value is £191,977. By dividing these figures, he computes his figure of 88.41%. Were he to exclude Flat 39, with a lease term of 86 years, the figure would reduce to 86.92%. At [9.5] of his report, he considers the average of the five RICS graphs for Greater London which produces a figure of 88.76%.
16. Mr Holden argues for a figure of relativity of 80.75%. His calculation is set out at [5.16] – [5.25] of his report. He has regard to five short leases (53.78-66.83 years), namely Flats 11 (sales in 2013 and 2016), 16, 18 and 19, and five long leases (87.23 - 155.44 years), namely Flats 37, 39, 41, 42 and 43. He makes the appropriate adjustments for time. He makes an additional deduction of £5,000 for improvement and computes a figure of 81.2% (at [5.21]) and then makes a greater deduction of £10,000 and computes a figure of 80.3% (at [5.22]). He takes an average of the two figures and adopts a mid-point of 80.75%.

The Tribunal's Determination

17. These Flats have onerous ground rents. Limited reliance can therefore be placed on the RICS graphs. The RICS Research Paper states that where there is a high ground rent, this will have the effect of depressing the value of the existing lease value and thus the relativity. The assumption made in the graphs of relativity is that the ground rent is nominal.
18. The Tribunal is therefore satisfied that the best evidence in this case is the local transactions. Neither expert made deductions for the following: (i) the benefit of the rights under the Act and (ii) the onerous rent terms. We have noted the deductions made by UTs to reflect the absence of rights under the Act which were considered in *Mundy* (see [14] above). The deductions made were 11.82 years: 20%; 17.8 years: 25%; 18.7 years: 15%; 37.7 years: 10%; 44 years: 7.5%. The longer the unexpired term, the smaller the deduction that should be made.
19. In the current case, the unexpired term is 64.17 years, so the deduction to reflect the absence of rights under the Act would be significantly less than 7.5%. We conclude that it is appropriate to make a deduction of 7.5% to reflect both the benefit of the rights under the Act and the onerous rent terms. We do not consider that it is necessary to make any deduction for improvements as on the evidence before us all the properties seem to be in a similar condition.

20. We turn to Mr Christou's Table at p.83. We consider it inappropriate to take into account the sale of the subject flat in July 2013, which was substantially before the valuation date. Mr Holden considered Flat 26. We have also excluded this as the sale was in February 2013.

21. We have concluded that the best evidence is the sales of Flats 11 and 18:

(i) Flat 11 was sold for £185,000 in February 2016 with an unexpired term of 64 years.

(ii) Flat 18 was sold for £178,949 in May 2015 for £170,000.

Adjusting for time, the prices at the valuation date of October 2015 would be £178,052 and £178,949 respectively. These values are consistent and we are satisfied that no further adjustment needs to be made. The average of the two is £178,500. We reduce this by 7.5% to reflect both the benefit of the rights under the Act and the onerous rent terms, and compute an adjusted figure of £165,112.

22. The experts have agreed a long lease value of the subject flat in the sum of £202,225. As this is agreed, we adopt that value. We therefore compute a relativity rate of 81.65% by dividing £165,112 by £202,225.

23. Our figure is much closer to that proposed by Mr Holden than that proposed by Mr Christou. There are two reasons for this:

(i) The short lease value is £165,112 rather than £169,722. This reflects the adjustments which have made to reflect both the benefit of the rights under the Act and the onerous rent terms.

(ii) The long lease value is £202,225 rather than £191,977. The long lease values for Flats 37 and 39 upon which Mr Christou relies, are significantly outside the range for Flats 41, 42 and 43. The unexpired term for Flat 39 is only 86 years. We suspect that there may have been special factors in respect of the sale of Flat 37. If the average of the time adjusted price of Flats 41, 42 and 43 is taken, namely £201,627, £210,548 and £219,914, one derives a figure of £210,969.

Issue 3: Is a 1% Uplift Required?

24. Mr Christou argues that there should be a 1% uplift should be made to the long lease value to compute the freehold vacant possession. He argues that a freeholder has a greater control over their property. He relies on the UT decision in *Earl Cadogan v Erkmann* [2011] UKUT 90 (LC) (see [98] at p.144).

25. Mr Holden argues that in his experience there is no difference in the open market between a lease of 154.17 years and its freehold value. There is no demand and no market for freehold flats in London. There are two reasons for this: (i) the lack of mortgage finance and (ii) the inherent difficulty of enforcing positive covenants. It is for this reason, that developers grant leases.
26. Mr Holden notes that up to the 1990s, buyers were willing to pay the full market value for leases of 99 years. Had buyers been willing to pay more for longer leases, developers would have responded. Over the last 20 years, purchasers have had a growing awareness of the shortcomings of leasehold tenure, and terms of 125/150 years are more commonly granted. He has carried out surveys of 94 different developments in Kingston and Chelmsford. These have shown that on 71% of estates, leases were granted for terms of less than 150 years, and 65% were for less than 125 years. Were there to be additional value in granting leases in excess of 150 years, developers would have responded.
27. The Tribunal prefers the evidence of Mr Holden. We accept that there would be no difference between the open market value of a lease of 154.17 years (the extended term of the subject lease) and its freehold. We consider that there is no demand for flats with a flying freehold. It is different from a lease of a house; the tenant of a flat would have the inherent difficulty of enforcing positive covenants. We are satisfied that the UT decision in *Earl Cadogan v Erkman* turned on its own facts.

Conclusion

28. We make the following determinations on the three issues in dispute:
 - (i) We are not willing to permit the Applicant to re-open the issue of the future ground rents.
 - (ii) We compute relativity of 81.65% based on the local transactional evidence.
 - (iii) We do not consider it appropriate to make a 1% uplift to compute the freehold vacant possession value.
 - (iv) We determine the premium payable to be £30,236. Our working calculation is set out in the Appendix.

Robert Latham
Tribunal Judge
29 September 2016

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

16 Sopwith Avenue, Chessington, Surrey KT9 1QE

Valuation by First-tier Tribunal

Valuation date: 10/1/2015
Lease term: 99 Years from 1st December 1980
Lease expires: 11/30/2079 Unexpired term (years): 64.16

Ground Rent:

Years	7.17	21.00	21.00	15.00
Reviews	12/1/2022	12/1/2043	12/1/2064	11/30/2079
Rent passing	£ 425	£ 775	£ 1,412	£ 2,574
Capitalisation rate	5.50%	5.50%	5.50%	5.50%
Deferment rate	5.00%			

Diminution in value of landlords' interests

Before	Rent reserved		£ 425	
	YP to 1st review		<u>5.79468</u>	£2,463
	Rent reserved		£ 775	
	YP to 2nd review	12.27503		
x	PV of £1 to 1st review	0.68129	<u>8.36288</u>	£6,481
	Rent reserved		£ 1,412	
	YP to 3rd review	12.27589		
x	PV of £1 to 2nd review	0.22133	<u>2.71707</u>	£3,837
	Rent reserved		£ 2,574	
	YP to 4th review	10.03549		
x	PV of £1 to 3rd review	0.07189	<u>0.72150</u>	£1,857
	Reversionary value		£ 202,225	
	PV of £1 to expiry		<u>0.0437</u>	£8,836
				£23,473
After	Reversionary value		£ 202,225	
	PV of £1 to expiry		<u>0.0005</u>	£109
				£23,364

Landlords' share of marriage value @ 50%

Proposed

Landlords' interest		£	109		
Extended lease value	100.0%	£	202,225	£	202,334

Present

Existing lease value @ 81.65%	81.65%	£	165,117		
Landlords' interests		£	23,473	£	<u>188,590</u>
Marriage Value				£	13,744
Landlord's share @ 50%					<u>£6,872</u>

Premium payable for lease extension

£30,236