£150

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/OOBD/OLR/2015/1412**
Property	:	**11 Old House Gardens, Park Road, Twickenham TW1 2QB ("the Flat")**
Applicants	:	**Gareth Tudor Morgan** **Rebecca Sian Morgan ("the tenants")**
Representative	:	**Russell Cooke LLP, solicitors**
Respondent	:	**Brickfield Properties Ltd ("the landlord")**
Representative	:	**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	:	**24 February 2016**

DECISION

Decision

1. The extended lease value of the flat at the agreed valuation date was £428,125.

2. Relativity of 88.41% 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 £32,249 in accordance with our attached valuation.

The application and hearing

4. The tenants 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 tenants were represented by Jeremy Levy BSc Hons MRICS who also gave expert evidence on their behalf. The landlord was represented by Nicola Muir a barrister. 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 of the flat we were, with Ms Muir's agreement, accompanied by Mr Levy.

Background

6. Old House Gardens comprises 16 flats in three blocks. Each of the outer blocks has three floors with 2 flats on each floor. The inner block has two floors with 2 flats on each floor. A "U" shaped drive provides excess to Park Road and is sufficiently wide to accommodate ten or eleven parked cars, although they are neither any designated parking spaces nor any garages.

7. The flat is on the ground floor of one of the outer blocks. It comprises 3 rooms, kitchen and bathroom. The rooms are well proportioned and generally the flat is in good condition with the usual modern amenities.

8. The tenants hold the flat under a lease granted on 2 June 1993 for a term of 99 years from 25 March 1983. The landlord holds an overriding lease of the block granted in 2011 for a term of 999 years from 4 April 2011 and is the competent landlord for the purpose of the Act. The freehold reversion is owned by St. Leonards Properties Ltd but they played no part in the proceedings.

9. On 31 March 2015 the tenants gave notice of their claim to extend their lease. On 5 June 2015 the landlord gave a notice in reply admitting the

claim. On 26 August 2015 the tenants made their application to the tribunal.

10. The tenants had first served a claim notice in September 2012 and their claim was admitted. The parties were unable to agree all the terms of acquisition and the tenants' subsequent application to this tribunal was considered at a hearing on 7 August 2013. By a decision dated 10 September 2013 ("the previous decision") a differently constituted tribunal determined that the extended lease value of the flat was £334,000 at 25 September 2012 and that a premium of £25,280 was payable for the grant of a new extended lease. For reasons that were not explained the new lease was not completed at that time and consequently the tenants gave the second claim notice referred to in the previous paragraph.

Issues in dispute

11. The parties had agreed the following:

    a. The valuation date at 31 March 2015
    b. An unexpired term of 66.8 years
    c. A deferment rate of 5%
    d. A capitalisation rate of 6.50%
    e. The gross internal area at 625 square feet
    f. The terms of the new extended lease.

12. 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.

13. Mr Levy on behalf of the tenants contended for an extended lease value of £415,000 and relativity of 89.50%. Mr Sharp contended for an extended lease value of £440,500 and relativity of 81.36%.

Mr Levy's approach

14. As far as the extended lease value was concerned Mr Levy limited the comparable evidence on which he relied to sales within 6 months of the valuation date because he considered that time adjustments were more subjective and prone to distortion than other adjustments. He identified four sales 17 Queens Keep, Park Road sold for £460,000, 12 Beresford Court, Park Road sold for £490,000, 4 Roseleigh Close sold for £525,000 and 22 Kelvin Court Drive sold for £469,950.

15. He adjusted for time using the Nationwide House Price Index for the Outer Metropolitan Area. He adjusted three of the comparable flats for size and then made a number of more subjective adjustments. In particular he reduced the sale price of 17 Queen's Keep by £25,000 because it has a garage and by a further £5,000 because it also has a balcony. He reduced the sale price for 4 Roseleigh Close by £25,000 because it has a garage and by a further £15,000 to reflect the perceived development potential in the

loft space. An average of these four adjusted sale prices produced a rounded figure of £415,000 that Mr Levy adopted as the extended lease value.

16. Turning to relativity Mr Levy said that there were no recent relevant sales of short leases. He relied entirely on the graphs in the October 2009 RICS research report for Greater London and England. The report includes five graphs produced by Beckett and Kay, Southeast Leasehold, Nesbitt and Co, Austin Gray and Andrew Priddell Associates Ltd. He rejected the Beckett and Kay and Austin Gray graphs as being unsuitable. In contending for relativity of 89.5% Mr Levy took an average of the other three graphs and then made a downward adjustment of approximately 1% to reflect his recent experience, the historic nature of the graphs and any inherent discrepancies in the graph data. However no further explanation for that downward adjustment was given.

Mr Sharp's approach

17. In contending for a long lease value of £40,500 Mr Sharp relied on three strands of evidence. Firstly he relied on the sale of three comparable flats. 5 Old House Gardens sold in July 2011 for £315,000, 6 Old House Gardens sold in January 2014 for £365,000 and 17 Queens Keep sold in August 2015 for £460,000. He simply adjusted the sale prices for time by using the Land Registry Index for flats and maisonettes in the London Borough of Richmond although he also placed an unspecified weight on adjustments made by reference to Savills' Southwest Flats Index.

18. His second strand related to unidentified *"comparisons"* in Kelvin Court that he said indicated time adjusted values of between £442,000 and £450,750 at the relevant date.

19. His third strand was the previous tribunal decision that when adjusted for time indicated an extended lease value £440,958.

20. *"Looking at this long lease evidence in the round"* he contended for a long lease value for £440,500 although the process by which he arrived at that conclusion is not entirely clear.

21. Mr Sharp's evidence on relativity was discursive and it was often difficult to understand the relevance of some of his evidence to his ultimate conclusion.

22. He firstly considered two short lease flats that were sold in August and September 2009 for £245,000 and £250,000. He firstly adjusted for time by reference to the Land Registry Index and then adjusted for lease length by reference to two of the graphs in the RICS Research Report. Finally he made a downward adjustment of 10% to reflect the value of the rights granted by the Act. In discounting for the act rights he relied in particular on a number of tribunal decisions. He also drew our attention to 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. These adjustments gave prices of £349,729 and £352,729. He concluded that the market evidence *"is pointing towards £351,000 ..... or 78.88% relativity"*.

23. Having considered this market evidence Mr Sharp then considered the various relativity graphs in the October 2009 RICS Research Report. Having done so he largely discounted the graphs in the Greater London and England section partly because mortgage funding is generally no longer available for leases with less than 80 years left to run and also because of *"changed market conditions"*. He concluded that the graphs were *"now of secondary importance in this location"*.

24. However having discounted the Greater London and England graphs he then relied on two other graphs. The first was the Gerald Eve graph that is included in Prime Central London section of the October 2009 RICS Research Report. He nevertheless relied on that graph because it contains pre "2003" evidence.

25. The second was the 2014 Beckett and Kay Mortgage dependent graph 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. The two graphs indicated relativities of 85.19% and 80% respectively.

26. In finally contending for relativity of 81.36% he gave equal weight to the market evidence and each of the two graphs upon which he relied.

Reasons for our decision

Extended lease value

27. We first deal with the two indices used for the time adjustment. As Ms Muir pointed out the Nationwide Index is published every three months, relates to all residential properties and covers an extremely wide geographical area. In contrast the Land Registry Index is published monthly, relates to flats and maisonettes and covers only the London Borough of Richmond. In answer to questions from Ms Muir, Mr Levy accepted that the Land Registry was *"possibly more accurate"* and when pressed he *"accepted the point"*.

28. For each of the above reasons we prefer the Land Registry Index that in our experience is now almost universally used outside Prime Central London. Mr Levy very helpfully recalculated the adjusted sale prices by

reference to the Land Registry Index and having done so the difference between the two valuers narrowed considerably.

29. We reject Mr Sharp's use of the previous decision as a means of establishing the long lease value of the flat at the valuation date. The previous decision was based upon the evidence produced to the tribunal in 2013 when the tenants were represented by a different valuer and that evidence was not before us. We have to weigh the evidence before us and not the evidence that was produced to a different tribunal two and half years ago.

30. Equally we reject 4 Roseleigh Place which was relied on by Mr Levy. It is a long way from Old House Gardens and in a significantly different area that is far closer to the river. In answer to Ms Muir's questions Mr Levy accepted that it was in a better location and yet he had made no adjustment to reflect that advantage. Furthermore Roseleigh Place is completely different to Old House Gardens in both style and character. It has the appearance of a number of semi-detached houses each of which contains two flats. Finally Mr Levy's assessment required a wholly subjective adjustment for perceived development value that was unsupported by any empirical evidence.

31. We also have considerable reservations about Mr Sharp's reliance on the sale of 5 Old House Gardens in July 2011. It required a time adjustment of nearly four years. The greater the time adjustment the less reliable the comparable especially in a rapidly rising market such as has been experienced in the last few years. We agree with Ms Muir that Mr Levy may have been too cautious in only relying on comparable sales within six months of the valuation date but there were considerable dangers in relying on a comparable sale nearly four years before the valuation date.

32. Consequently we were left with four comparables sales that could properly inform our extended lease valuation: 6 Old House Gardens, 17 Queen's Keep, 12 Beresford Court and 22 Kelvin Court.

33. Queen's Keep is adjacent to Old House Gardens and the developments are broadly similar. Number 17 has a balcony and a garage. It will be recalled that Mr Levy had made downward adjustments of £5,000 and £25,000 to reflect the perceived advantages of a balcony and garage. Mr Sharp had made no adjustments but in answer to our questions he accepted that it might be appropriate to deduct £2,500 for the balcony and £12,000 for the garage.

34. None of the suggested adjustments were supported by any empirical evidence but having inspected both blocks we prefer Mr Sharp's evidence. The balcony at 17 Old House Gardens is small and surrounded by a concrete apron. The advantage is small and the adjustment proposed by Mr Levy excessive. Equally the advantage of a garage is to an extent offset by the available parking on the drive of Old House Garden and our

inspection of both Queen's Keep and Beresford Court suggests that even when garage parking is available residents prefer to park on the drives of both blocks.

35. Both valuers agreed that Beresford Court was superior to both Queen's Keep and Old House Gardens and that was confirmed by our inspection. Mr Levy's evidence was that Beresford Court was *"a better block than Old House Gardens"*. Mr Sharp in his oral evidence also conceded that Beresford Court was *"the best block in the road"*. Clearly a downward adjustment is required to the sale price of Beresford Court to reflect the acknowledged advantage of that block. In the absence of any specific proposal by either valuer we have discounted the sale price by 5%, which we are satisfied adequately reflects the advantage of Beresford Court.

36. No other adjustments are required either to 6 Old House Gardens or 22 Kelvin Court and indeed none were suggested by either valuer. Accordingly our analysis of the adjusted comparable sales is set out in the following table.

Property	**Price**	**Time adjusted**	**Garage, balcony and block adjusted**	**Adjusted price**	**Area**	**£psf**
17 Queen's Keep	460,000	441,200	14,500	426,700	615	694
12 Beresford Court	490,000	483,215	24,161	459,054	700	655
6 Old House Gardens	365,000	425,960	0	425,960	591	721
22 Kelvin Court	469,950	450,750	0	450,750	675	668
				Average		**£685**

37. The price per square foot of £685 when applied to the agreed gross internal area of 625 square foot gives an extended long lease value of £428,125, which we adopt.

Relativity

38. The short lease market evidence relied on by Mr Sharp does not assist us. The two sales predate the valuation date by five and half years and the time adjustment is so great that they cannot be relied on with any confidence. We may have taken a different view if Mr Sharp had compared the short lease prices with extended lease prices from the same period but he did not. Indeed Mr Sharp appeared to accept the inadequacy of the historic

short lease evidence when he said: *"I have considered market evidence because we are directed to do the best we can with it"*.

39. The relativity graphs were the only other evidence relied on by the two experts. As is not unusual in these cases the experts had chosen graphs that were most favourable to their client's positions and quoted selectively from the RICS research report.

40. We had particular difficulty with Mr Sharp's evidence that included a number of assertions from which no obvious conclusions were drawn. As observed he ultimately relied on the Gerald Eve and the mortgage dependent Beckett & Kay 2014 graphs. Although we accept Mr Sharp's point that the Gerald Eve graph is based largely (but by no means exclusively) on pre-act data, it nevertheless relates to settlements and sales in prime central London and the research report draws a clear distinction between prime Central London on the one hand and Greater London and England on the other. The Prime Central London graphs should not be used when determining relativity outside that area and consequently we disagree with Mr Sharp's use of the Gerald Eve graph.

41. Equally it would be dangerous to rely on the mortgage dependent Beckett & Kay 2014 graph in isolation not least because Mr Sharp neither disclosed the data set that underpinned it nor did he provide that firm's narrative explanation that would have been published with the graph. We do however agree with Mr Sharp to the extent that it must be logical to substitute the 2014 Becket & Kay mortgage dependent graph for that contained in the RICS report.

42. As pointed out in the RICS report the members of the working group were unable to agree a definitive graph. All the relativity graphs are open to criticism for the reasons stated in the report. Perfect evidence of short lease values in a" no act" world is no longer available. In such circumstances we consider that the widest possible number of Greater London and England graphs should be considered. That approach reduces the risk of relying one or a small number of graphs that may be fundamentally flawed.

43. Having substituted the 2014 Beckett and Kay graph for that contained in the report an average of all 5 RICS graphs gives relativity of 88.41%, which we adopt.

Conclusion

44. Adopting the extended lease value of £428,125 and relativity of 88.41% we calculate the price to be paid for the extended lease at £32,249 in accordance with the calculations contained in the attached valuation.

Name: Angus Andrew **Date:** 24 February 2016

11, Old House Gardens
Park Road, Twickenham, TW1
2QB

Long Lease Value (Unimproved)	£428,125			
Freehold	£432,450			
Existing Lease Value (Unimproved)	£382,329			
Deferment Rate	5%			
Capitalisation Rate	6.50%			
Freeholder's Present Interest				
Term				
Term 1				
Rent Reserved	£75.00			
YP to 1st review 0.98 years @ 6.5%	0.9208			
		£69		
Term 2				
Rent Reserved	£150.00			
YP to 2nd review 33 years @ 6.5%	13.4591			
PV of £1 in 0.98 years @6.5%	0.9402			
		£1,898		
Term 3				
Rent Reserved	£300.00			
YP to reversion 33 years @ 6.5%	13.4591			
PV of £1 in 33.98 years @6.5%	0.1177			
		£475		
Reversion				
FH reversion	£432,450			
PV of £1 in 66.98 years @ 5%	0.0381			
		£16,476		
			£18,918	
less				
Freeholder's Proposed Interest				
FH reversion	£432,450			
PV of £1 in 156.98 years @ 5%	0.0005			
			£216	
				£18,702
Marriage value				
Proposed				
Extended lease value	£428,125			
FH in reversion	£216			
less				
Existing				
Freeholder's Interest	£18,918			
Short lease value	£382,329			
Marriage Value		£27,094		
50:50 division				£13,547
Premium for lease extension				**£32,249**