



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

Case Reference : LON/00BF/OLR/2018/0156

Property : 26 The Maisonettes, Alberta Avenue, Cheam, Sutton, SM1 2LQ

Applicant : Mr Pritan Paresh Patel

Representative : Mr David Nesbit MSc MRICS

Respondent : Brickfield Properties Limited

Representative : Ms Nicola Muir (Counsel)

Type of Application : Enfranchisement

Tribunal Members : Judge Robert Latham
Ms Marina Krisko FRICS

Date and venue of Hearing : 31 July 2018 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 14 August 2018

Date of Revised Decision : 3 September 2018

CORRECTION CERTIFICATE

Both the Applicant (letter dated 15 August) and the Respondent (letter dated 28 August) have identified some clerical errors in our decision, dated 14 August. Most of these do not affect our calculation of the premium. However, an issue has arisen as to deduction which we made in respect of "Act rights" ([23] of our decision). The decision refers to the Tribunal having made a 5% deduction. However, in our calculation, we have made a deduction of 5.5%.

We are satisfied that our calculation based on a 5.5% is correct and that our error is the reference to "5%" rather than "5.5%". We have had regard to two matters: (i) the Upper Tribunal decision in *Orchidbase* in which a reduction was made of 5.5% where the unexpired term was 57.68 years and (ii) the FTT

decision in *No.25, The Mansions* in which a similar reduction was adopted for an unexpired term of 56.90 years. We referred to *Ordhidbase* in [24] of our decision. The unexpired term in the current application is 56.12 years. Had we adopted 5%, the premium would have been some £600 lower, namely £49,297.

The corrections are made pursuant to Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. They are highlighted in the revised decision.

Any time for appealing or seeking a review of this revised decision runs from today's date.

REVISED DECISION

The Tribunal determines that the premium payable by the Applicant in respect of the extension of his lease at 26 The Maisonettes, Alberta Avenue, Cheam, Sutton, SM1 2LQ is £49,895.

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: 26 The Maisonette, Alberta Avenue, Cheam, Surrey, SM1 2LQ;
 - (ii) The subject flat has two bedrooms, a living room, kitchen and bathroom on the ground floor of a 1930's block. There is a private directly accessed patio.
 - (iii) Date of Tenant's Notice: 14 August 2017;
 - (iv) Valuation Date: 14 August 2017;
 - (v) Date of Application to the Tribunal: 25 February 2018;
 - (vi) Tenant's leasehold interest:
 - Date of Lease: 27 September 1977;
 - Term of Lease: 99 years from 29 September 1974, with an unexpired term of 56.12 years;
 - Ground Rent: £60 pa, increasing to £90 pa from 28 September 2040.
 - (vii) Landlord: Brickfield Properties Limited;
 - (viii) Tenant: Pritan Paresh Patel.

The Hearing

3. The hearing of this application took place on 31 July 2018. The Applicant, tenant, was represented by Mr David Nesbitt, (Hons), MSc, MRICS. The Respondent, landlord, was represented by Ms Nicola Muir (Counsel) instructed by Wallace LLP. She adduced evidence from Mr Robin Sharp, BSc, FRICS. Both experts provided written reports.
4. The parties agreed to the following:
 - (i) Valuation Date: 14 August 2017;
 - (ii) Unexpired Term: 56.12 years;
 - (iii) Capitalisation Rate: 6.5%;
 - (iv) There should be a 1% uplift to the long lease value to determine the FVPV;
 - (v) The gsi of the subject flat is 533 sq ft.
 - (vi) The value of the existing term is £992.
5. The following issues are in dispute:
 - (i) The long leasehold value: Mr Nesbitt contends for £260,000; Mr Sharpe for £292,220.
 - (ii) The short leasehold value: Mr Nesbitt contends for £202,590; Mr Sharpe for £203,491.
 - (iii) The relativity rate: Mr Nesbitt contends for 77.14%; Mr Sharpe for 68.94%.
 - (iv) Deferment Rate: Mr Nesbitt contends for 5.5%; Mr Sharpe for 5%.
 - (v) Premium: Mr Nesbitt contends for £35,653; Mr Sharpe for £55,757.
6. Both experts gave evidence before a First-Tier Tribunal ("FTT") in *No.25 The Maisonettes* (LON/00BF/OLR/2017/0963). Judge Timothy Powell and Mrs Helen Gyselynck MRICS gave their decision on 22 February 2018 (revised on 8 March 2018). Mr Sharp used a sale of the subject flat on 5 March 2015 as a comparator for computing the short leasehold value. Both experts raised arguments which had been rejected by the FTT. Neither party has appealed the decision.
7. At the commencement of the hearing, Ms Muir raised a preliminary issue. She sought to hold Mr Nesbitt to his assessment of the short leasehold value of £202,590. She referred us to paragraph 3 of Schedule 13 of the Act which relates to the diminution in value of the landlord's

interest. She reminded the Tribunal that the Act make no reference to “relativity”, but rather to “the value of the landlord’s interest in the tenant’s flat prior to the grant of the new lease”. Ms Muir was not willing to accept Mr Nesbitt’s long leasehold value. Mr Nesbit had applied a percentage reduction to this figure based on graphs to compute the short lease value. We are satisfied that it would not be appropriate to hold Mr Nesbitt to his assessment of the short leasehold valuation in isolation. Both long leasehold and short leasehold valuations must be considered together as part of the valuation of the premium.

Issue 1: The Extended Lease Value

8. There is ample evidence of comparables at The Maisonettes. Mr Nesbitt asked us to have regard to Nos. 5, 8, 24 and 35 and Mr Sharp to Nos. 1, 5, 8, 28 and 35.
9. We are satisfied that No.5 is the best comparable. It is a ground floor flat of a similar size to the subject flat. It has an unexpired term of 125 years from 29 September 2009. It sold for £280,000 in March 2017. Mr Nesbitt makes no adjustment for time. He stated that it is not his practice to do so unless there is a time gap of more than six month. We are satisfied that a modest adjustment should be made and using the Sutton Borough Land Registry. This increases the value to £287,592.
10. Mr Sharp suggests that an adjustment should be made of 0.5% for the geared rent review. We disagree. The first rent review is in 2030 when the rent will increase to 0.5% to the capital value of the flat. We do not believe that this would influence the price offered by a prospective purchaser. We are comforted by the fact that the FTT in LON/00BF/OL/2017/0963 took the same view.
11. We agree that No.35 is also a good comparable. This sold for £293,000 in September 2017 with an unexpired term of 125 years from 29 September 2009. The value, adjusted for time is £293,941. It is some £4,000 higher than No.5. However, the flat is slightly larger (555 sq feet) and is on the first floor, which could explain this difference. We therefore rely on this to support our view that No.5 is the best comparable.
12. The Tribunal has not given weight to the following comparable:
 - (i) No.1: This flat sold for £280,000 in June 2016. This is some time before the valuation date. It was sold with the benefit of a s.42 Notice.
 - (ii) No.8: This sold in June 2016 for £237,000. Its condition is uncertain. The sale price is substantially less than the other comparable which suggests that there may have been special factors. This seems to have been a sale at auction.

(iii) No.24: This is a two-bedroom flat which was sold in February 2016 for £278,000. The experts were unable to provide us with any further particulars about this sale.

(iv) No.28: This flat sold for £276,000 in June 2018. However, it is somewhat larger at 615 sq ft.

13. Mr Nesbit proposes that a £20,000 should be made to reflect the investor's concern that a tenant would acquire security of tenure under Schedule 10 of the Local Government & Housing Act 1989. He referred us to [9.43] of Hague "Leasehold Enfranchisement" (6th Edition, 2014). Ms Muir pointed out that this section dealt with the 1967 Act, where a Rent Act protected tenancy would arise rather than an assured tenancy at a market rent. In [7.1.11] of his report, Mr Nesbitt refers to four cases where a reduction was made. However, two of these related to the 1967 Act. The two which related to the 1993 Act had much shorter reversions, namely *Cadogan Estates Limited v McGirk* – 7 years, and *Aeberli v Fund 24 Trustees of the 1983 Portman Settlement* – 4 years. That is not the situation in the current case, where the unexpired term is 56.12 years.
14. This issue was considered by the Upper Tribunal in the recent decision of *Midland Freeholds Ltd and Speedwell Estates Ltd* [2017] UKUT 463 (LC). Mr Andrew Trott FRICS concluded (at [65]): "In these circumstances I am not persuaded that a hypothetical purchaser would make any discount to the FVPV where the lease has an unexpired term of 46 years. I therefore make no deductions in respect of Schedule 10 rights under the 1989 Act."
15. Mr Nesbit made a similar submission to the FTT in LON/00BF/OL/2017/0963. In that case, the FTT was referred to [33.07] of Hague which deals with the 1993 Act. Hague notes that this had only had a major impact where the existing lease value is very short. Where a tenant has the right to remain as an assured tenant at a market rent, the discount is arguably nil. In that case, the unexpired term was 56.90 years. The FTT decided to make no deduction, concluding that the prospect of the statutory right to remain was too remote for a prospective purchaser to take into account at the valuation date. We agree and make no deduction.
16. We therefore determine the extended lease value to be £287,500 based on No.5 being the best comparator. We increase this by agreed figure of 1% to determine the freehold vacant possession value of £290,375.

Issue 2: Relativity - The Unimproved Existing Lease Value

17. The following guidance on relativity is provided by the learned editors of Hague 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).”

18. The Upper Tribunal has now given further guidance in the decision of *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC); [2016] L&TR 32, a decision subsequently upheld by the Court of Appeal reported at [2018] EWCA Civ 35; [2018] 1 P&CR 18. The three cases considered by Mr Justice Morgan and Mr Andrew Trott FRICS involved Prime Central London. At the end of an extensive judgment, the UT gave guidance for future cases at [163] – [170]. We are assisted by the following passages:

“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.

169. Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease

with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.

170. In the past, valuers have used the Savills 2002 enfranchisable graph when analysing comparables, involving leases with rights under the 1993 Act, for the purpose of arriving at the FHVP value. The authority of the Savills 2002 enfranchisable graph has been to some extent eroded by the emerging Savills 2015 enfranchisable graph. The 2015 graph is still subject to some possible technical criticisms but it is likely to be beneficial if those technical criticisms could be addressed and removed. If there were to emerge a version of that graph, not subject to those technical criticisms, based on transactions rather than opinions, it may be that valuers would adopt that revised graph in place of the Savills 2002 graph. If that were to happen, valuers and the tribunals might have more confidence in a method of valuation for an existing lease without rights under the 1993 Act which proceeds by two stages. Stage 1 would be to adjust the FHVP for the property to the value of the existing lease with rights under the 1993 Act by using the new graph which has emerged. Stage 2 would be to make a deduction from that value to reflect the absence of rights under the 1993 Act on the statutory hypothesis.”

19. Mr Nesbit asks us to disregard the sale of the subject property in March 2015. A statement signed by Mr Patel suggest that this was a forced sale and that the property was in a state of substantial disrepair. Mr Patel spent some £20,000 to put the flat into a habitable condition. Mr Nesbit rather asks the Tribunal to take the average of the Savills June 2016 Enfranchisable graph at p.150 (75.60%) and the Gerald Eve (2015) graph 78.67%. Initially, he submitted that we should determine relativity at 77.14%. Mr Nesbitt accepted in cross-examination that he had used the figure from the 2009, rather than the 2016, Gerald Eve graph and that the average should rather be 75.45%.
20. Mr Sharp asks us to take the sale of the subject property in March 2015 for £160,000 as our starting point. He then makes a number of adjustments: (i) 10% for condition (£176,000); (ii) adjustment for time of 23.4% (£217,176); (iii) 1.2% for the shorter lease length (£214,571); and (iv) a 10% reduction for Act rights (£193,114). At [6.15], he computes a relativity rate of 65.42% based on a FHVP of £295,171.
21. Mr Sharp notes that this transaction is historic. He therefore takes an average of three figures:

(i) 75.4%, having regard to the Savills 2015 Enfranchiseable graph at p.331 (75.5%) and the Gerald Eve 2016 Table of Relativities at p.335 (75.3%). He accepts that these relate to PCL.

(ii) 66% being derived from the Beckett and Kay 2014 and 2017 graphs at p.303-4. He argues that relativity is lower in the suburbs, than PCL and that Beckett and Kay is the most reliable graph in the suburbs.

(iii) 65.42% from the market transaction of the subject flat.

The average is 68.94%.

22. On 19 July 2018 (at p.143), Beckett and Kay informed Mt Nesbit that their 2017 graph is based on an analysis of 6 LVT, FTT and UT decisions and 41 settlements. Beckett and Kay have considered changes in the attitude of lenders and market perception since their graph was first published by the RICS. The critical observation is that “the line is hand drawn, so there is an element of opinion involved”. We have not been provided with details of the data points upon which the line is based. In respect of unexpired terms of between 40 and 90 years, the graph is significantly lower than the other RICS graphs.

23. The Tribunal has concluded that the sale of the subject flat for £160,000 in March 2015 is the best evidence of short leasehold value. We accept the evidence that it was sold in a poor condition and make an adjustment of £20,000 in respect of this. The resultant figure of £180,000 must be adjusted by 23.4% for time to give a figure of £222,120. There must also be an adjustment of for the shorter lease length of 1.2% giving an adjusted figure of £219,455. Finally, there must be an adjustment for Act rights. We are satisfied that a reduction of 10% is excessive, and make one of 5.5%. We therefore determine short lease value of £207,385. This would give a relativity of 71.42% based on our determination of the FVPV of £290,375. However, it is our computation of the short lease value which is relevant to our computation of the premium.

24. In determining the deduction of 5.5% we have had regard to the guidance provided by P.D.McCrea FRICS in *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 494 (LC):

“60. That is the principle, but what level of discount should be applied? In order to put Mr Holden’s opinion into context, it is useful to consider a shorthand (but not necessarily exhaustive) table of discounts accepted or made by the Tribunal for unexpired terms of 40 years or more, as follows:

Unexpired	Adjustment	Decision	Reference
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term	for "Act rights"		
41.32	10%	Mundy	[2016] UKUT 0223 (LC)
45	7.5%	Nailrile	[2009] RVR 95
57.68	5.50%	Orchidbase	[2016] UKUT 0468 (LC)
67.49	3.50%	Contactreal	[2017] UKUT 1078 (LC)
68.62/68.67	3.50%	Elmbirch	[2017] UKUT 314 (LC)
77.7	2.50%	Sarum Props	[2009] UKUT 188 (LC)

25. In determining a figure of relativity of 71.42% based on the local transaction of the subject flat, we are comforted that we have determined a figure which is well within the range of the figures based upon the various graphs to which we are asked to have regard. In arguing for a figure of 75.45%, Mr Nesbit relies on graphs which relate to PCL and where relativity seems to be higher. The average of the two PCL graphs (75.4%) and the Beckett and Kay (66%) upon which Mr Sharp relies is 70.7%. Whilst we accept that relativity in the suburbs is lower than in PCL, the Beckett and Kay graph is surprisingly low, particularly when compared with the 2009 RICS graphs. This is yet another case when the Tribunal has been required to determine the issue of relativity on the basis of evidence which is far from satisfactory.

Deferment Rate

26. Mr Sharp contends that the Tribunal should adopt the standard rate of 5% approved by the UT in *Cadogan v Sportelli* [2007] 1 EGLR 153. Mr Nesbit rather contends for a deferment rate of 5.5%. Mr Nesbit sought to show from a table of average flat price growth over 20 years that there was a tangible difference in growth between the City of Westminster and the London of Borough of Sutton, where the subject property is located. He argued that there must be a difference in deferment rate to reflect poorer prospect of growth in Sutton; and also to reflect the more intensive management of the subject block and obsolescence. He sought a 0.25% increase for these factors and a further 0.25% increase to reflect the fact that the reversion was not freehold, but to a long 999-year leasehold interest.
27. The Tribunal is not persuaded that we should depart from the standard *Sportelli* deferment rate of 5%. Mr Nesbitt relies on the case of *Zuckerman v Trustees of Calthorpe Estates* [2009] UKUT 235 (LC), which involved a property in the West Midlands. In the current case,

there is no evidence of obsolescence or of the need for a greater intensity of management. There has been a thriving property market throughout London. The capital growth figures are not persuasive. The respective performance of different areas of London has varied over time. Ms Muir points out that since mid-2014, flat prices in Sutton have risen by 31.5%; while the value of flats in PCL has declined by 18.8%. The reversion to a 999-year long lease is a reversion to a virtual freehold and would have no appreciable effect on this valuation. We therefore adopt the *Spotelli* rate of 5%. We are comforted by the fact that the FTT in LON/00BF/OL/2017/0963 took the same view.

Conclusions

28. We make the following determinations on the issues in dispute:

- (i) The Long Leasehold Value is £287,500;
- (ii) The Freehold vacant possession value: £290,375;
- (iii) The unimproved existing lease value: £207,385;
- (iv) The relativity rate: 71.42%;
- (v) Deferment Rate: 5%.

We determine the premium payable to be £49,895. Our working calculation is set out in the Appendix.

Judge Robert Latham
3 September 2018

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.

APPENDIX - TRIBUNAL VALUATION

Valuation date	15.08.2017
Remaining term	56.12 years
FVPV	£290,375
Long lease value	£287,500
Existing lease value	£207,385
Relativity	71.42%

<u>Ground Rent</u> income agreed	£ 992
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<u>Reversion</u>	£290,375			
PV 56.12 years	5%	0.0647	£ 18,787	
Less				
eventual reversion			£290.375	
PV 146 years	5%	0.0007	<u>£ 203</u>	£18,584

Marriage value

Landlord's interest	£ 203
Lessee's	£287,500

Less

Lessee's interest	£207,385
Landlord's	<u>£ 19,779</u>

<u>£ 60,638</u>	50%	<u>£30,319</u>
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<u>Premium</u>	<u>£49,895</u>
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