



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

Case reference : **LON/00AQ/OLR/2018/1429**

Property : **38 Everton Drive, Stanmore,
Middlesex HA7 1ED**

Applicant : **Mr P O Nicholas**

Representative : **Cook Taylor Woodhouse**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

Type of application : **Section 48 Leasehold Reform
Housing and Urban Development
Act 1993**

Tribunal members : **Judge Pittaway
Ms M Krisko FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **26 March 2019**

DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£26,484**

The application

1. This is an application made by Mr Nicholas pursuant to section 48 (1) Leasehold Reform Housing and Urban Development Act 1993 (“**the 1993 Act**”) for a determination of the premium to be paid for a lease extension, or other terms of acquisition of the lease of 38 Everton Drive Stanmore Middlesex HA7 1ED (the “**Property**”).
2. By a notice of claim dated 11 April 2018, served pursuant to Section 42 of the Act, the applicant exercised the right to claim a new lease of the property and proposed to pay a premium of £15,968 for the new lease, £15,800 payable to the respondent and £168 payable to Daejan Properties Limited.
3. On 18 June 2018 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £64,410 (payable to the respondent with no payment to Daejan Properties Limited) for the new lease.
4. On 5 November 2018 the applicant applied to the tribunal for a determination of the premium and terms of acquisition.

The issues

Matters agreed

5. The following matters were agreed, evidenced by a joint statement of facts dated 14 January 2019
 - (i) Accommodation: 2 bedrooms, 1 reception, bathroom and kitchen.
 - (ii) Gross internal area: 551 sq.ft
 - (iii) Valuation date: 13 April 2018.
 - (iv) Unexpired term: 67.948 years
 - (v) Details of the tenants' leasehold interest:
 - (a) Date of lease 15 July 2015

- (b) Term expiry 25 March 2086
 - (c) Ground rent £75 per annum until 24 March 2020, rising to £100 per annum until 24 March 2053 and £125 per annum for the remainder of the term.
 - (vi) Capitalisation of ground rent 6.5%
 - (vii) Deferment rate 5%
 - (viii) Extended Lease/ freehold relativity 1%
6. Immediately before the hearing the parties agreed
- (i) That improvements were no longer an issue;
 - (ii) That the extended lease value of the Property is £330,000; and
 - (iii) That the freehold value of the property is £333,333. The tribunal have accepted this figure while noting that 1% relativity would have produced a freehold value of £333,300.

Matters not agreed

7. Accordingly, the only matter outstanding for the tribunal to determine is the existing leasehold value.

The hearing

8. The hearing took place on 19 March 2019. Mr Adam Robinson MRICS of Selkent Surveyors gave evidence for, and made submissions on behalf of, the applicant. Mr Robin Sharp FRICS gave evidence for, and made submissions on behalf of, the respondent.
9. Both valuers referred to previous decisions of the tribunal and the Upper Tribunal, and as appropriate these are referred to below.
10. Neither party asked the tribunal to inspect the Property, and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
11. The applicant relied upon the (undated) expert report and valuation of Mr Robinson contained in the bundle before the tribunal, and the

respondent relied upon the expert report and valuation of Mr Sharp dated 3 March 2019.

12. Because the parties had agreed the extended lease and freehold value of the Property immediately before the hearing the valuations attached to their respective reports required amendment. The tribunal requested that amended valuations be sent to it. This the valuers did, on 19 March and 20 March.

The tribunal's determination

The tribunal made its decision having regard to the evidence before it and the submissions made on behalf of both parties.

Reasons for the tribunal's determination

The existing lease value.

13. Both valuers agreed that following the decision in *Sloane Stanley Estates v Mundy [2016] UKUT 0223* the use of direct comparables was the preferred method of ascertaining the existing lease value, but it was agreed that there were no such comparables for the Property.
14. Mr Robinson submitted that while all the published relativity graphs have deficiencies the most appropriate graphs to be used, given the geographical location of the Property, were the five Greater London and England graphs from the RICS research paper 2009 Leasehold Reform: Graphs of Relativity. These produce a relativity of 91.23%. He did not agree with Mr Sharp that the financial crash had affected relativity nor that the RICS changing its description of a short lease from a lease with a term of less than 85 years to a lease with a term of 70 years affected relativity. He considered that all the 2009 graphs made an allowance for the effect of the 1993 Act. He did not believe that there had been a change in relativity since the graphs had been published in 2009 by reason of the factors outlined by Mr Sharp, although he did accept that the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”) had affected relativity.
15. Mr Sharp submitted that the most reliable graph was Savills 2015 enfranchiseable graph of relativity, published in 2016 which gives a relativity for a lease of the length of this one of 83.3%. In his opinion this figure represents a ceiling for relativity for leases of this term and he believed, citing the Upper Tribunal decision in *Mallory v Orchardbase [2016] UKUT 468* (“*Orchardbase*”) that relativity for the Property should be lower than this figure, as it is not located in Prime Central London. Mr Sharp referred to the more recent Beckett & Kay 2017 mortgage dependent graph in support of a relativity in the

region of 83%. He explained that the relativity in these two graphs is lower than that given by the graphs in the 2009 research paper due to the financial crash. In further support of his contention for a relativity below that in the Savills 2015 enfranchiseable graph of relativity he referred the tribunal to the Upper Tribunal decision in **Reiss v Ironhawk [2018] UKUT 0311** and to the tribunal decision in **Windermere Court LON/00AE/OLR/2017/0433 (“Windermere”)**, where in each case the relativity determined was below that of the given in the Savills’ 2015 enfranchiseable graph. In his opinion had market evidence been available it would have indicated a relativity below that provided by the 2009 graphs. Mr Robinson challenged Mr Sharp’s reliance on the decision in *Orchardbase* as in that case the applicant was unrepresented (and therefore may not have challenged the evidence as he might have had he been represented) and because the decision relied on available market evidence. He also questioned the basis of the Beckett & Kay 2009 graph as it did not set out the data upon which it had been prepared.

16. The tribunal does not believe that there is evidence to support Mr Robinson’s contention that all the 2009 graphs are already adjusted to reflect the “No Act World”. The 1993 Act changed relativity, but the tribunal consider that this was reflected in the graphs published in 2009. However, these graphs were based on research undertaken before the 2002 Act and the tribunal do not consider that they take into account the effect of the 2002 Act. Both valuers agreed that the market had changed following the 2002 Act.
17. The tribunal agree with the determination in *Windermere* (paragraph 16) that the financial crisis of 2008 has affected relativity, in that it is now more difficult to obtain a mortgage, particularly for short leases and that it is difficult to obtain a mortgage on a lease with a term of less than 70 years. Accordingly some adjustment is required to the 2009 graphs.
18. While Mr Robinson conceded that there were deficiencies in all the published relativity graphs he did not suggest an appropriate adjustment to be made to the graphs upon which he relied to reflect this. And the tribunal consider that Mr Sharp has placed too much reliance on *Orchidbase*; not least because there was market evidence before the tribunal in that case. Further, the tribunal does not consider that the Savills graphs should be used unadjusted for a property that is not in Prime Central London. And the tribunal is reluctant to place over much weight on the new Beckett & Kay graph without knowing what underlying data produced it. Neither valuer offered any evidence as to how these graphs might be adjusted for a non-Prime Central London Property.
19. The tribunal is faced with having to make an adjustment to the 2009 graphs and/or the 2015 Savills graph without either valuer offering

assistance as to what that adjustment should be. For the applicant Mr Robinson has proposed a relativity of 91.23%. For the respondent Mr Sharp has proposed a relativity of 83.15%.

20. The tribunal have therefore, pragmatically, taken an average of these two relativities and adopted a relativity of 87.19%, giving an existing lease value of £290,633.

The premium

The valuers valuations agree down to the calculation of Marriage Value. The tribunal have therefore not seen it necessary to produce a complete valuation. However its calculation of marriage value, based on the agreed diminution in the freeholder's interest of £13,600 is attached.

Name: Judge Pittaway

Date: 26 March 2019

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).

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Agreed diminution in value
of the freeholder's interest £13,600

Marriage Value

Extended lease value (agreed) £330,000

Freehold interest after

Lease extension (agreed) £ 500
£330,150

less

Existing lease value £290,633

Existing freehold interest £ 13,750 £304,383
£ 25,767

add

50% of £25,767 £12,884

Premium **£26,484**