



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

Case Reference	:	LON/00AH/OLR/2019/1000
Property	:	34 St James Court, St James Road, Croydon, CR0 2SE
Applicant	:	Ian Burden and Dzung Thi Thu Tran
Representative	:	Penny Veness FRICS
Respondent	:	Brickfield Properties Limited
Representative	:	Robin Sharp FRICS
Type of Application	:	Enfranchisement
Tribunal Members	:	Judge Robert Latham Ms Anthea Rawlence MRICS
Date and venue of Hearing	:	14 January 2020 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	3 February 2020

DECISION

The Tribunal determines that the premium payable by the Applicants in respect of the extension of their lease at 34 St James Court, St James Road, Croydon, CR0 2DE is £39,419. The calculation is annexed to this decision.

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: 34 St James Court, St James Road, Croydon, CR0 2DE;
 - (ii) The subject flat has two bedrooms, a living room, kitchen and bathroom.
 - (iii) Date of Tenant’s Notice: 7 January 2019;
 - (iv) Valuation Date: 7 January 2019;
 - (v) Date of Application to the Tribunal: 30 August 2019;
 - (vi) Tenant’s leasehold interest:
 - Date of Lease: 25 January 1983;
 - Term of Lease: 99 years from 25 December 1974, with an unexpired term of 54.96 years;
 - Ground Rent: the current ground rent is £120pa, rising to £180 pa in December 2040.

The Hearing

3. The hearing of this application took place on 14 January 2020. The Applicant, tenant, was represented by Ms Penny Veness BA, FRICS. The Respondent, landlord, was represented by Mr Robin Sharp, BSc, FRICS. Both experts provided written reports.
4. The parties agreed the following:
 - (i) Valuation Date: 7 January 2019;
 - (ii) Unexpired Term: 54.96 years;
 - (iii) Capitalisation Rate: 6%;
 - (iv) Deferment Rate: 5%;
 - (v) There should be a 1% uplift to the long lease value to determine the FVPV;
 - (vi) The GIA of the subject flat is 68.77m²; 740 sq ft;
 - (vii) The split between the leaseholder and the freeholder is £1.
5. The following issues are in dispute:
 - (i) The long leasehold value: Ms Veness contends for £245,000; Mr Sharpe for £272,500.

(ii) The relativity rate: Ms Veness contends for 76.79%; Mr Sharpe for 67.53%.

Ms Veness computes a premium of £37,000; Mr Sharp one of £53,725.

Issue 1: The Extended Lease Value

The Subject Property

6. St James' Court is an inter-war development of three walk-up four storey purpose built blocks of 57 flats under flat roofs. The subject flat has two bedrooms, a reception room, kitchen, and bathroom. It is on the third (top) floor. There is no lift. There are four flights of stairs to the flat. The block benefits from an on-site resident caretaker. There are 22 numbered and 5 un-numbered parking spaces which are controlled by permit. Unlike the front block facing St James' Road, the flat does not have a gas supply.
7. The lease was granted in 1974. The kitchen and bathroom have been changed twice in the last seven years. However, these has been upgraded to a modest standard. The tenant has replaced the original electrical night storage heaters with a more modern electrical water fed central heating system. The accommodation has been reconfigured by a previous tenant to create a third bedroom. The experts are agreed that we should ignore this.
8. The flat was constructed in the 1930s with Crittal windows. These were replaced by the landlord some 10 years ago with UPVC double glazed units. This work was funded through the service charge. Ms Veness argues that a significant reduction should be made in respect of this. We disagree. Paragraph 4A(c) of the Act provides that

“that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or any predecessor in title is to be disregarded”.
9. The leading authority is the House of Lords decision in *John Lyon's Charity v Shalson* [2003] UKHL 32; [2004] 1 AC 802. The following passages are taken from the speeches of their Lordships:

“This statutory language makes plain that the price will be diminished under this head if and only if it is found (i) that works of improvement (meaning works other than renewals and repairs) have been carried out by the tenant or his predecessors in title, (ii) that the tenant or his predecessors in title have carried out these works at their own expense, and (iii) that these works have

increased the value of the house” (Lord Bingham of Cornhill at [3]);

“For the tenant to secure a reduction, he must therefore, first, identify improvements which he or his predecessors have carried out at their own expense, and secondly, satisfy the tribunal that but for those improvements the house and premises would have been worth less” (Lord Hoffman at [17]).

“ ‘Improvement’ is a word of ancient lineage in the law of landlord and tenant and land law generally: see, for example, section 25 of the Settled Land Act 1882. In general terms it means additions or alterations to the house and premises which are not mere repairs or renewals: see Hague on Leasehold Enfranchisement, 3rd ed (1999), para 9–30” (Lord Hoffman at [18]).

10. We reject Ms Veness’ argument for three reasons:

(i) The installation of double glazed units was not an improvement. In c.2010, the original Crittal windows were at the end of their natural life. The options to the landlord were to renew with new replacement windows or install UPVC double glazed units. New Crittal windows would probably have been more expensive, the maintenance costs would have been higher and they would not have provided the same level of thermal insulation. The renewal with UPVC windows was therefore a cost-effective repair.

(ii) The work was not carried out by the tenant. It was an item of repair carried out by the landlord, albeit that it was funded through the service charge.

(iii) We are far from satisfied that the UPVC windows would have enhanced the value of the flat. New Crittal windows would have been more in keeping with the original design of the buildings.

The Best Comparable

11. We are satisfied that the best comparable is a sale of Flat 12 St James Court which had sold for £260,000 on 25 October 2019 with an extended lease. This two-bedroom flat is on the first floor. The layout is identical, albeit that Mr Sharp suggests that it is slightly smaller (by 26 sq ft). We must consider what adjustments should be made:

(i) Mr Sharp suggests that we should make an adjustment in size. We disagree. The layout of the flats is identical. We do not consider that the modest difference in size would impact upon the price that a hypothetical

purchaser would be willing to pay for a flat in this locality. Further, we are not satisfied that there is any significant difference in size. This figure is based on the Estate Agent's particulars (at p.290) which we suspect may be unreliable.

(ii) Mr Sharp suggests that we should make an adjustment for time. Our valuation date is 7 January 2019. This sale completed on 25 October 2019. We have the UK House Price Index for flats and maisonettes in Croydon (at p.405-7). Mr Sharp points out that the index for January 2019 is 125.2 and October 122.8, a modest fall. However, it is probable that the purchase price was agreed some months before the completion date. If the price was agreed in July, the index would have been 124.7. Given these uncertainties, we do not consider that it is appropriate to make any adjustment for time.

(iii) We are satisfied that an adjustment should be made for floor level. Mr Sharp argued that a flat on the third was more desirable than one on the first floor. A third floor flat would have no footfall from inhabitants in a flat above. This is true. However, there are greater disadvantages for a third floor flat in a block with no lift. There are four flights of stairs. This would discourage any purchaser with young children, or anyone who felt daunted by the ordeal of carrying shopping up to their flat.

(iv) We are also satisfied that a modest reduction should be made for the upgrading of the electrical central heating system.

12. Taking factors (iii) and (iv) into account, we make an adjustment of £10,000 and assess a long leasehold value of the subject flat at £250,00

Other Comparables

13. Ms Veness asked us to consider two other comparables at St James Court. We do not find either of these to be useful:

(i) A studio flat at 20 St James Court with an extended lease sold for £170,000 on 20 May 2018. This is a completely different type of flat of 323 sq ft. There was no agreement as to what adjustment should be made for size.

(ii) A two-bedroom flat at 35 St James Court sold with an extended lease at auction in December 2019 for £205,000. This is a similar flat on the third floor. We were told that a sale for £240,000 fell through. The offer price was reduced to £220,000 for a quick sale. It finally sold at auction. This flat sold in March 2016 for £200,000 in March 2016 with an unextended lease. We are satisfied that there were special features relating to the sale of this property in December 2019 and that we should not rely on it.

14. Ms Veness sought to rely on three further comparables at 33 Warwick Gardens, and Flats 44 and 14 Fitzroy Court. Mr Sharp sought to rely on three comparables at 22 Gary Court and Flats 8 and 4 Windmill Road. Each expert argued that the comparables relied on by the other bore little resemblance to the subject flat. Experts must recognise their duty to this tribunal. We expect them to seek to agree a basket of the best comparables, albeit that each may give a different weighting to the comparables in that basket. We accept that these properties are significantly different from the subject flat and are content to rely upon the best comparable, namely Flat 12 St James Court.

Issue 2: Relativity - The Unimproved Existing Lease Value

15. 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).”

16. 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.”

17. Ms Veness did not consider any evidence of local transactions or discuss the steps which she had taken to identify such evidence. When questioned, she suggested that there were no relevant transactions. She therefore had regard to the available graphs. She considered the recent decisions of the Upper Tribunal, including the recent decision A.J. Trott FRICS in *Trustees of the Barry and Peggy High Foundation v Zucconi*

[2019] UKUT 242 (LC). She decided to take an average of the following: (i) The 2016 Savills Unenfranchiseable Graph (74.67%); (ii) The 2016 Gerald Eve Unenfranchiseable Graph (74.44%) and (iii) the average of the five non-PCL 2009 RICS graphs (81.31%). She derives an average of 76.79%

18. Mr Sharp identified a basket of eight sales of short leases at St James Court over a period over the period September 2015 and October 2019. They are all two-bedroom properties. He makes various adjustments and derives a short lease value of £189,500. The average adjusted figures range from £143,400 to £227,950. He then makes a 10% reduction for Act rights. He divides the resultant figure of £170,550 by £275,252 (his assessment of the long lease value of the subject flat) and derives a figure for relativity of 62%.
19. Mr Sharp then has regard to the published graphs. He has regard to (i) the Beckett and Kay 2017 graph which he considers to be the most reliable of the RICS graphs because it has been updated (66%); and (ii) the average of the Savills 2016 and the Gerald Eve 2016 Graphs (74.6%). He then takes an average of the three figures: 62%, 66% and 74.6% and derives an average of 67.53% for his relativity. The difference between the two experts is substantial.
20. Our starting point is the basket of the eight local transactions identified by Mr Sharp. However, we exclude Flat 27 which sold at an auction in October 2019 for £144,000. This is significantly below the price achieved by the seven other sales in his basket of comparables. We note that this flat had previously been listed for sale on 27 August 2018 at £240,000. We are therefore satisfied that there were special features relating to the sale and that we should not rely on it.
21. We accept the adjustments made by Mr Sharp for time and lease length for the other seven comparables. We also adopt his approach. First, we take an average of the seven flats (Flats 32, 47, 35, 48, 49, 51 and 53): £195,337. Secondly, we take an average of the three flats considered to be in good condition (Flats 32, 48 and 57): £205,721. We then take an average of these two figures: £200,529.
22. We must then make an adjustment for Act rights. We are satisfied that the reduction of 10% made by Mr Sharp is too high. We have 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 term	Adjustment for “Act rights”	Decision	Reference
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)

23. For an unexpired term of 54.96 years, we consider that an appropriate deduction is 6%. Our adjusted figure for the short lease value without Act rights is £188,497. We divide this by our long lease value of £250,000 and derive a figure for relativity of 75.40%.
24. Our figure of 75.40% is not out of line with either the 2016 Savills Unenfranchiseable Graph (74.67%) or the 2016 Gerald Eve Unenfranchiseable Graph (74.44%). These are both PCL. The Beckett and Kay (2017 revision) graph is significantly out of line with the four other 2009 RICS non-PCL graphs. It is not necessary for us to research the well-known criticisms of these graphs. Since we are satisfied that (i) there is good evidence of local transactions and (ii) both experts agree that there is a local market for flats at St James Court which have a particular character, we do not consider it appropriate to make any adjustment to our figure of 75.40%.

Conclusions

25. We make the following determinations on the issues in dispute:
- (i) The Long Leasehold Value is £250,000;
 - (ii) The Freehold vacant possession value: £252,500;
 - (iii) The relativity rate: 75.40%;

We determine the premium payable to be £39,419. Our working calculation is set out in the Appendix.

Judge Robert Latham
3 February 2020

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 s 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 1 Valuation of 34 St James Court Croydon CR0 2SE

Valuation					
Relevant Date 7 January 2019					
Unexpired Term 54.96 years					
Notional Freehold	£252,500				
Extended Lease	£250,000				
Existing Lease	£190,385				
Relativity	75.40%				
Term					
Initial ground rent		£120			
YP 21.96 years % 6%		12.03	£1,444		
Increased ground rent		£180			
YP 33 yrs @6%	14.2302				
PV £1 in 21.96 years @6%	0.278	3.9559956	£712		
Reversion					
Extended lease value	£252,500				
PV £1 in 54.96 years 5%		0.0685	£17,296	£19,452	
Present interest					
After extension	£252,500				
PV of £1 144years at 5%		0.0009	£227	£19,225	
Diminution					£19,225
Marriage Value					
Value after lease extension					
proposed freeholder's interest			£225		
proposed leaseholder's interest			£250,000	£250,225	
less					
existing freeholder's interest		£19,452			
existing leaseholder's interest		£190,385		£209,837	
				£40,388	
landlord share 50%				£20,194	£20,194
Lease Extension Premium					<u>£39,419</u>