



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

Case reference : **LON/00AH/OLR/2023/0704**

Property : **5 St James Court, St James Road, Croydon CR0
2SE**

Applicant : **Halsey Limited**

Representative : **Pilsbury Winthrop Shaw Pittman LLP**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

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

Tribunal members : **Judge Pittaway
Mr D Jagger MRICS**

Date of hearing : **8 May 2024**

Date of decision : **25 June 2024**

**Date of amended
decision** : **31 July 2024**

AMENDED DECISION

“The Tribunal exercises its powers under Rule 50 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to correct the clerical mistake, accidental slip or omission at paragraphs 12 and 25, the paragraph numbering and the stated valuation date in the Appendix of our Decision dated 25 June 2024. Our amendments are made in bold. The amendments correct typographical errors.

Summary of the tribunal’s decision

- (1) The value of the extended lease with vacant possession is £251,183.
- (2) The value of the freehold with vacant possession is £253,720.
- (3) The value of the short lease is £165,248
- (4) The premium payable for the new lease is £54,833
- (5) The reasons for the Tribunal’s decision are set out below.

The background

1. This is an application made by Halsey Limited 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 Flat 5 St James Court St James Road Croydon CR0 2SE (the “**Property**”).
2. By a notice of claim dated 22 February 2023, 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 £40,000 for the new lease, and £350 by way of other amounts payable under Schedule 13 of the Act.
3. On 25 April 2023 the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £94,150 for the new lease. It accepted the proposal made by the tenant of £350 for the other amounts payable under Schedule 13 of the Act.
4. On 3 October 2023 the applicant applied to the Tribunal for a determination of the premium.

The hearing

5. The hearing took place on 8 May 2024 attended by Mr Radford MRICS of Boston Radford, acting for the applicant and Mr Sharp FRICS, acting for the respondent.

6. The documents before the Tribunal at the hearing were an indexed bundle of documents (362 pages), including a Statement of Facts dated 15 April 2024 setting out the Matters Agreed and the Matters in Dispute.
7. 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.
8. The applicant relied upon the expert report and valuation of Mr Radford dated 22 April 2024 and the respondent relied upon the expert report and valuation of Mr Sharp dated 'April 2024'.
9. The following cases were referred to;
 - Mallory v Orchidbase Limited* [2016] UKUT 468 (LC) ("**Orchidbase**")
 - Sloane Stanley v Mundy* [2016] UKUT 223 (LC) ("**Mundy**")
 - Trustees of the Barry and Peggy High Foundation vs Claudio Zucconi and Mirella Zanre* [2019] UKUT 242 ('**Zucconi**')
 - Daejan Investment Limited v N and L Collins* [2024] UKUT 26 (LC) ('**Daejan**')
 - A and M Sumihin v Brickfield Properties Ltd*
LON/00AH/OLR/2021/0927 ('**48 St James Court**')
 - Sureset Consulting Limited v Brickfield Properties Limited*
LON/00AH/OLR/2020/0471 ('**27 St James Court**')
10. At the hearing the tribunal heard evidence from Mr Radford and evidence and submissions from Mr Sharp.

The issues

Matters agreed

11. The following matters were agreed before the hearing
 - (i) The subject property is a first floor flat walk up 2 bedroom purpose built flat.
 - (ii) Unexpired term at valuation date: 50.83 years
 - (iii) Ground rent: £150 Per annum until 25 December 2024 rising to £225 per annum
 - (iv) Deferment rate: 5%
 - (v) Freehold addition: 1%
 - (vi) There are no improvements to be disregarded.

12. At the hearing the parties agreed a square footage of 715 Sq.Ft., a valuation date of **24 February 2023** and a capitalisation of ground rent at 6%.

Matters not agreed

13. The following matters were not agreed
 - (i) The unimproved extended lease value. Mr Radford contended that this should be £242,550 and Mr Sharp that this should be £272,500. This made Mr Radford's freehold value £245,000 and Mr Sharp's freehold value £275,000.
 - (ii) The unimproved existing lease value. Mr Mr Radford contended that this should be £174,832 and Mr Sharp £176,851.
 - (iii) The premium. Mr Radford contended that this should be £45,365 and Mr Sharp that it should be £60,580..

The tribunal's determination

14. The tribunal has had regard to, the valuation reports in the bundles, the evidence that it heard, and the case law referred to in reaching its decision. As appropriate these are referred to in the reasons for the tribunal's decision.

Freehold/Extended lease value

Evidence and submissions

15. In calculating the value of an extended lease with vacant possession, and thus the freehold value of the Property both valuers looked to comparable evidence within the development, adjusting sale prices to reflect the valuation date of the Property. Mr Radford used the 'House Price Index for Flats and Maisonettes in Croydon'. Mr Sharp used 'Land Registry Index for Flats and Maisonettes in Croydon based on sales volume'
16. Mr Radford stated that the unimproved condition of the Property must be assumed for the purpose of a statutory valuation, and that allowance should be made when comparing the Property to comparables that had undergone refurbishment or modernisation.
17. Mr Radford referred the Tribunal to 56, 37, 47 and 35 St James Court. 56 St James Court is a third floor flat of similar configuration to the Property, having a term of over 140 years remaining on the lease. It is currently on the market at an asking price of £265,000, having

previously been sold in 2021 and 2023. Mr Radford calculated the effective adjusted freehold values of those sales at £219,950 and £212,123 respectively.

18. 37 St James Court, another third floor flat sold in November 2022 on a 141 year lease at an effective adjusted freehold value of £262,500, if the flat had a square footage similar to that of the Property, or £229,450, if its square footage was 818 sq.ft. as stated in the agent's particulars.
19. 47 St James Court is a first floor flat with a similar square footage to the Property which sold with a lease of approximately 142 years in March 2022 at a price which produces an adjusted effective freehold value of £272,320. Mr Radford considered that the condition of this flat was likely to have been a factor in achieving the high sale price achieved.
20. 35 St James Court is a 2 bedroom third floor flat which sold at auction in January 2020, and then by private treaty in August 2020 at adjusted effective freehold prices of £221,470 and £248,000 respectively. Mr Radford considered it possible that some decorative work had been carried out to facilitate the second sale.
21. On the basis of the above Mr Radford says that the evidence suggests that the freehold value of a flat in an unimproved condition is in the region of £240,00 to £250,000 and that he considers a fair price for the Property, unimproved and on an effective freehold basis is £245,000.
22. Mr Sharp set out details of the sales of 12, 47, 37, 48 and 56 St James Court in his report (using only the October 2023 sale for 56).
23. Mr Sharp made adjustments for the floor upon which the flat is situated (+1.5% for a third floor flat), and whether it is in the front or rear building of the two buildings that comprise St James Court, as the two building have different forms of energy supply (+2% if in the front block as it benefits from a gas supply). Mr Radford submitted that neither of these were factors which should affect value in flats of the value of the Property.
24. Mr Sharp did not use 48 St James Court as a comparable as the price was determined by a Tribunal on then available evidence. He did not use 56 as he was of the opinion that its sale price is not in line with other market evidence. Mr Sharp calculated an extended leasehold value based on the average of his adjusted sale prices of Flats 12, 47 and 37 of £276,730, which he rounded down to £272,500 to make contingency for floor area (he doubted the stated floor area of Flat 37) and other considerations. This gave a notional freehold value of £275,252.

The tribunal's determination

25. The Tribunal finds on the evidence before it the most appropriate comparables are Flats 47 and 37 St James Court. It has discounted the other flats provided as comparables for the following reasons
- Flat 12 was sold in 2019, which is too long ago to make it a useful comparable, even with indexation.
 - Flat 35 was sold at auction which the Tribunal finds to be a more restrictive sales arena. It was subsequently sold privately but the Tribunal has no reliable information on specification
 - The price for Flat 48 was determined by a Tribunal on the evidence then available to it.
 - The current price at which Flat 56 is being marketed is out of kilter with the price evidence provided by all the other flats, and has not been sold at the price at which it is being
- The Tribunal accepts Mr Radford's argument that if Flat 56, which has been refurbished remains unsold at £265,000, the Property, which is unmodernised, cannot have a value of £272,500, the value which Mr Sharp has placed on it.
26. The parties are agreed that the Property is in an unimproved state. From the evidence provided by the agents' particulars for Flats 37 and 47 each flat has recently been refurbished to a high standard and the Tribunal finds that each has been improved, rather than just repaired, and that fittings and condition affect value. The Tribunal finds that it is appropriate to make an adjustment to the comparables to reflect their improved state and finds that an adjustment of 5% to be reasonable.
27. The Tribunal does not consider that the different floors upon which the Property and the comparable Flat 37 are located necessitates an adjustment to the value of Flat 37, nor that different form of energy supply for water and heating to Flats 37 and 47 necessitates an adjustment to the prices achieved for the comparables. This is consistent with the approach adopted by the Tribunal in 27 St James Court decision.
28. In adjusting the sale prices of comparables the Tribunal prefers the Index used by Mr Sharp. It is the Land Registry Index whereas the author of the index used by Mr Radford is not known. Using the Land Registry Index used by Mr Sharp the sale price of 47 St James Court (£265,500) is indexed to £269,552 less 5% giving an extended leasehold value of £256,074. The sale price of 37 St James Court indexed to £259,254 less 5% gives an extended leasehold value of £246,291. The Tribunal has taken the average of these two values, of £251,183, which gives a freehold value for the property of £253,720.

Existing Leasehold Value lease value

Evidence and submissions

- 29.** Both valuers were agreed that following the decision in *Mundy* the preferred method of establishing relativity is to look to market transactions around the valuation date as the starting point for determining the value of the existing lease without rights under the 1993 Act.
- 30.** Mr Radford stated that it had been difficult to find open market evidence but referred the Tribunal to various First-tier Property Tribunal decisions, submitting that where parties were represented by a surveyor the Tribunal decisions had determined a relativity in line with *Zucconi*, namely a blended two graph approach, utilising the Savills 2015 Unenfranchiseable Graph and the Gerald Eve 2016 Unenfranchiseable Graph. Mr Radford therefore submitted that he would adopt the *Zucconi* approach in this case, which would give a relativity of 71.36%, and an existing leasehold value of £174,832.
- 31.** Mr Sharp referred to two flat sales, adjusting for time, floor level, lease term (at 0.6% per annum), condition and position. 27 St James Court had sold in October 2019 for £140,000, which Mr Sharp adjusted to £163,783. Mr Sharp submitted that it was appropriate to have regard to 27 St James Court notwithstanding the decision in 48 St James Court. At the time of that decision the Tribunal had been unaware of its second sale. 50 St James Court had sold in January 2024 for £150,000, which Mr Sharp adjusted to £172,044. Mr Sharp averaged these two sums and applied a 6.35% Acts Rights reduction to that average of £167,928 to give an existing leasehold value of the property of £157,265. He had adopted a straight line approach to the Acts Rights deduction in line with the decision in *Daejan*.
- 32.** Using his existing lease value and freehold value gave Mr Sharp a relativity of 57.14%. He then tempered this by averaging it with the average of the Savills and Gerald Eve Graphs (71.36%) to reach a relativity of 64.25%. Mr Sharp submitted that the applicant in the 48 St James Court case did have a qualified valuer. He therefore adopts an existing leasehold value of £176,851.

The Tribunal's determination

- 33.** *Mundy* is authority for the proposition that if there is evidence of sales of short leases these should take preference over graphs, even if adjustments have to be made. This is the approach that the Tribunal has adopted.
- 34.** The Tribunal has therefore looked to the sale prices of Flats 27 and 50 St James Court, adjusted for time and lease length. The Tribunal has not made adjustments for floor level nor for the building within which

the flats are located, following the same approach as it has adopted in relation to the extended lease values. The price of Flat 27 adjusted accordingly is £160,535 and of Flat 50 £158,818.

35. The Tribunal has applied the 6.35% Act Rights deduction to the average of the two adjusted values (£159,677). This gives a relativity of 58.9%. The Tribunal has then further adjusted this with reference to the graph relativity of 71.36%, averaging the two percentages to give a relativity of 65.13%. Such a blended figure provides a more proportionate figure and has been used by the Tribunal previously in the *48 St James Court* decision. It is considered an appropriate method of testing the value of relativity. Contrary to what Mr Radford submitted the applicant in that case was represented.

36. This gives an existing leasehold value of £165,248.

The premium

37. Taking an extended leasehold value of £251,183, a freehold value of £253,720 and an existing lease value of £165,248 the Tribunal determines that the premium is £54,833, as set out in its valuation in the Appendix.

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|--------------|-----------------------|--------------|---------------------|
| Name: | Judge Pittaway | Date: | 25 June 2024 |
| NAME | Judge Pittaway | Date: | 31 July 2024 |

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).

Appendix

5 St James Court, St James Road, Croydon, Surrey CRO 2SE VG/LON/00AH/0LR/2023/0704

Components

| | | |
|------------------------------------|-------------|----------------------------|
| Valuation date: | 24/2/23 | |
| Deferment rate: | 5% | |
| Capitalisation rate: | 6% | |
| Freehold value: | £253,720 | |
| Long lease value | £251,183 | |
| Existing Lease Value | £165,248 | |
| Unexpired Term | 50.83 years | |
| Ground rent currently receivable | £150 | |
| Capitalised @ 6.0% for 17.83 years | 10.7695 | £1,615 |
| Rising to: | £225 | |
| Capitalised @ 6.0% for 33 years | 14.2302 | |
| Deferred 17.83 years @ 6.0% | 0.353 | £1,133 |
| Reversion to freehold value: | £253,720 | |
| Deferred 50.83 years @ 5% | 0.0837 | £21,236 |
| Less eventual reversion | £253,720 | |
| | 0.01 | <u>£254</u> <u>£20,982</u> |
| | | <u>£23,730</u> |
| Marriage Value | | |
| Landlords proposed interest | £254 | |
| Tenants Proposed interest | £251,183 | £251,437 |
| Freeholder's Interest | £23,984 | |
| Short lease value | £165,248 | £189,232 |
| | | £62,205 |
| 50% Division of Marriage value | | <u>£31,103</u> |
| LEASE EXTENSION PREMIUM. | | <u>£54,833</u> |

