



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

Case reference	:	LON/00BC/OLR/2015/1057
Property	:	3A Valebrook, 2 Park Avenue, Ilford, Essex IG1 4RT
Applicant	:	Mr Atul Kumar Sinha (leaseholder)
Representative	:	J H Hart & Co LLP, solicitors
Respondent	:	Brickfield Properties Ltd (head lessor)
Representative	:	Wallace LLP, solicitors
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Timothy Powell Richard Shaw FRICS
Date of determination and venue	:	21 October 2015 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	24 November 2015

DECISION

Summary of the tribunal's decision

The appropriate premium payable for the new lease is **£40,700**.

Background

1. This is an application made by the applicant leaseholder 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 for

the grant of a new underlease of Flat 3A Valebrook, 2 Park Avenue, Ilford, Essex IG1 4RT (the "property").

2. By a notice of a claim dated 11 November 2014, served pursuant to section 42 of the Act, the applicant's predecessor in title exercised the right for the grant of a new underlease in respect of the subject property. At the time, the applicant's predecessor held the existing lease granted on 12 January 1970 for a term of 99 years (less three days) from 24 June 1968 at an annual ground rent of £25. The applicant's predecessor proposed to pay a premium of £30,000 to the head lessor and £1.00 to the freeholder for the new lease.
3. The underlease and the notice of claim were assigned to the applicant on 28 November 2014.
4. On 13 January 2015, the respondent head lessor served a counter-notice admitting the validity of the claim and counter-proposed a premium of £49,250 to the head lessor for the grant of a new lease.
5. On 11 June 2015, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

6. The following matters were agreed:
 - (a) The subject property is a third-floor purpose-built flat comprising two bedrooms, reception room, kitchen and bathroom/WC (in a nine-storey block of flats constructed in the late 1960s/1970). There is a designated parking space;
 - (b) The gross internal floor area is 87.27 square metres, which equates to 940 square feet;
 - (c) The valuation date: 11 November 2014;
 - (d) Date of the underlease: 12 January 1970;
 - (e) Term: 99 years (less 3 days) from 24 June 1968;
 - (f) Unexpired term of the underlease: 52.6 years;
 - (g) Sale price of property as at 28 November 2014: £170,500;
 - (h) Capitalisation of ground rent: 8% per annum; and
 - (i) Deferment rate: 5%.

Matters not agreed

7. The following matters were not agreed:
 - (a) The long leasehold value of the flat, the applicant contending at the hearing for £175,000 and the respondent contending (after amendment) for £222,500;
 - (b) The current interest relativity, the applicant contending at the hearing for 80% and the respondent contending for 67%;
 - (c) The long leasehold relativity, the applicant contending at the hearing for £100% and the respondent contending for 99%; and
 - (d) The premium payable, the applicant contending at the hearing for £28,950 and the respondent contending (after amendment) for £44,584.

The hearing

8. The hearing in this matter took place on 21 October 2015. The applicant was represented by Mr Mark Dooley MRICS, and the respondent by Ms Harriet Holmes of counsel and Mrs Geneviève Mariner FRICS.
9. 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.
10. The applicant relied upon the expert report and valuation of Mr Dooley dated 14 October 2015 and the respondent relied upon the expert report and valuation of Mrs Mariner dated 7 October 2015 (with amendments).
11. Mr Dooley arrived late to the hearing, at about 10:30 am, due to rainy weather. He asked the tribunal for time to read Ms Holmes' skeleton argument. The tribunal adjourned for half an hour, following which Mr Dooley said that he would be happy to proceed with the hearing.
12. At different points during the hearing, Ms Mariner made alterations to her written expert's report, which were noted by the tribunal.

The extended leasehold and freehold values of the property

13. The statutory valuation of the premium payable requires the tribunal to determine, amongst other things, three values for the subject flat: the current short leasehold value, the extended long leasehold value and the reversionary freehold value.

14. One of the statutory assumptions in Schedule 13 of the Act is that the value is to be assessed as if there were no right to acquire any new lease, i.e. in a hypothetical 'no-Act world'.
15. The parties' surveyors approached the calculation of the premium in different ways, adopting two different valuation methodologies.
16. It was common ground that the property had been sold to the current leaseholder for £107,500, with the sale completing on 28 November 2014. This was 17 days after the service of the notice under section 42 of the Act, on 11 November 2014.

Mr Dooley's approach

17. Mr Dooley adopted what might be characterised as a 'bottom up' approach. His contention was that the sale price of the subject property was an accurate reflection of its market value, subject to the unexpired lease term, then 52.6 years. However, the sale price also reflected certain improvements that had been carried out to both the block and the flat since commencement of the lease.
18. In order to determine the near freehold value of the property, Mr Dooley's approach was to adopt the actual sale price as the starting point and to look at graph evidence to determine what proportion of the near freehold value the actual sale value reflects. Of the various graphs that are available, he chose the Charles Boston graph produced in a publication by Sweet & Maxwell. In the light of the graph evidence, he came to the conclusion that the transaction price, £170,500, reflected 80% of the near freehold value of the property. On that basis, the near freehold value was £213,125.
19. Mr Dooley sought to justify his calculation by reference to actual sales evidence within the development. In particular, flat 2A Valebrook sold on 14 July 2014 for £211,750, some four months prior to the relevant valuation date, subject to a long lease. His valuation of £213,125 for 3A Valebrook reflected a modest increase on the sale price for 2A.
20. He then made a deduction of £5,000 from the near freehold valuation of 3A, to reflect improvements, namely the double-glazing and replacement heating, arriving at £208,125, as being the value of the property at the valuation date, but reflecting the physical circumstances at the commencement of the underlease.
21. Having arrived at a near freehold value, it was then necessary to determine the long leasehold value, for the purposes of the statutory valuation. Mr Dooley considered that the long leasehold value was 100% of, i.e. the same as, the freehold value and that no deduction should be made. This is dealt with below. The result was his valuation,

appended to his report, that the appropriate premium should be valued at £28,960.

22. Mr Dooley then stood back and looked at additional evidence. He chose an agreement reached by his colleague, Derek Rona, with Ms Mariner, acting for the same freeholder, of the premium payable for flat 4B Valebrook. That was agreed at £28,995 with a valuation date of November 2013, a year previously. To his mind, that reinforced his opinion of the appropriate premium to extend the lease of 3A.

Ms Mariner's approach

23. Ms Mariner adopted what might be characterised as a 'top down' approach. She started by considering comparable properties to establish the long leasehold value of flat 3A. She took the same sale of flat 2A in July 2014, which sold for £211,750 with the benefit of a newly extended, long lease. Being directly below the subject flat, it had the same 'footprint'.
24. She then made a £2,500 discount for central heating (the flats originally having convection heating) and an increase of 6.6%, to reflect the increase in house prices in the London Borough of Redbridge (according to the Land Registry) between July 2014 and the valuation date of the subject property, in November 2014. Rounded down, this produced her long leasehold value for flat 3A of £222,500.
25. Ms Mariner looked for support from two current, uncompleted transactions: the proposed sales of 1C and 2C Valebrook. With deductions and discounts for time, she arrived at adjusted long leasehold values of £230,000 and £225,000 at November 2014; but she did not place much weight on these as evidence, preferring to rely on the sole completed transaction, the sale of flat 2A in July 2014.
26. Having arrived at the long leasehold value of flat 3A, Ms Mariner added 1% "in accordance with established practice" to arrive at the reversionary freehold value of £224,725.
27. Turning to the short leasehold value of flat 3A and relativity, Ms Mariner relied on the exhortations of the Lands Tribunal in *Nailrile v Earl Cadogan & Others* [2008] EWLands LRA/114/2006, [2009] RVR 95, for the tribunal to rely on empirical market evidence, where it exists. She relied on the sale of the subject property itself on 28 November 2014, for £170,500. From that she deducted £7,500 for improvements and a 7.5% discount to reflect the price difference between the 'Act' and the 'no-Act' worlds, arriving at a short lease value of £150,775.

28. She compared this figure with the sales of two other flats with short leases, namely flat 3B (which she understood to be a larger flat) and 4A, both of which sold in February 2015. After allowing for any improvements, time and the 'no-Act' world, she arrived at comparable values, as at November 2014, of £170,000 and £160,000, respectively. Ms Mariner could offer no explanation why these figures were higher than the subject flat, and therefore relied on the actual sale of flat 3A as her best, *prima facie* evidence.
29. Comparing her short lease value with the reversionary value resulted in a relativity of 68.86%; and once the valuation was complete, a premium due for the lease extension of £44,584.

The tribunal's determination

30. The tribunal determines that the premium payable for the lease extension is **£40,700**.

Reasons for the tribunal's determination

Long leasehold value

31. Mathematically, it is possible to calculate the necessary values to be used in the statutory valuation using either Mr Dooley's 'bottom up', or inversion, approach, or Mrs Mariner's 'top down' approach. In the tribunal's experience, the 'top down' approach is the usual method of valuation and the one most utilised by valuers, where there is market evidence to justify its use. It is preferable for a number of reasons, not least because the inversion approach relies on too many variables, such as the choice of which graph (or graphs) to use, and the appropriate relativity to apply when making the inverted or reverse adjustment.
32. In the case of *Nailrile Ltd v Earl Cadogan & Others* (ibid.) the Lands Tribunal considered the methods of determining relativity, i.e. the use of graphs and the use of market evidence (discounted to reflect the fact that 'real world' sales are tainted by the existence of rights under the Act). In paragraph 228 of its decision, it agreed with the comments of the Tribunal in an earlier case, *Arrowdell Ltd v Coniston Court (North) Hove Ltd*, LRA/72/2005, that:

“...it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world.”
33. While “regard can also be had to graphs of relativity”, it is clear that the wide variation and unreliability of such graphs means that empirical market evidence is to be preferred, where it exists.

34. In order to reach the long lease value of the subject flat, Mrs Mariner relied on such empirical market evidence, namely the sale price in July 2014 of a flat in the same building, namely 2A, to which she applied a discount for improvements and an adjustment for time. She also referred to the sales of 1C and 2C (both under offer, but not completed) and made the same adjustments.
35. Mr Dooley, however, relied on a sale price of a property with a short lease (i.e. without the benefit of an extended lease) and then applied an 80% inverse relativity. There are several problems with this approach, not least, the selection of the appropriate graph or graphs of relativity, from which to derive the relativity percentage.
36. Of the various graphs available, Mr Dooley chose to make exclusive use the Charles Boston graph of relativity. He justified this choice in his report “because the data on which it is based is also supplied” with the graph. However, several criticisms may be made of this graph (as of many of the other graphs of relativity), for example: that it is based on purely Act-world settlement evidence, that it comprises largely of Prime Central London properties, and that it includes houses as well as flats, enfranchisements under the Leasehold Reform Act 1967 and voluntary, rather than statutory lease renewals.
37. Considering the above, the tribunal takes the view that the approach taken by Mr Dooley is far less robust; and it much prefers the approach taken by Mrs Mariner, of real sales evidence, albeit based on only one completed comparable and two agreed though not completed sales. The Tribunal adopts Mrs Mariner’s amended long lease value of £222,500.

Current short lease value

38. With regard to the short lease value, both Mr Dooley and Mrs Mariner begin with the £170,500 sale price of the subject flat, some 17 days after the valuation date. As mentioned above, Mr Dooley then applies an inverse relativity of 80% to achieve the near freehold value, from which he deducts £5,000 for improvements. The resulting ‘long lease value’ is then discounted by 80% again, to achieve a short lease value of £166,500, which is then used in his valuation.
39. Mrs Mariner, however, takes the £170,500 and deducts £7,500 for improvements. At this stage, she makes a further 7.5% for the value of ‘Act’ rights, relying on a similar deduction that was made in *Nailrile*.
40. Mr Dooley criticised Mrs Mariner’s adoption of the *Nailrile* deduction, or any deduction, for ‘Act’ rights. He said that *Nailrile* was a conjoined appeal of several cases; unlike the present case, they involved intermediate leasehold interests; in one case an allowance for ‘Act’

rights was agreed because evidence was produced of the price paid; but in the other cases there was no evidence. In his submission, a *Nailrile* deduction must be proved by evidence in every case; Mrs Mariner had failed to adduce any real evidence in the present case and *Nailrile*, having been misinterpreted and/or misused, provided no support for her contention that there should be a deduction for 'Act' rights.

41. The tribunal notes the submissions made by Mr Dooley, but prefers to rely on Mrs Mariner's expert opinion in this respect. The Act requires the valuation to be carried out under an assumption of there being a 'no-Act' world and to suggest that there should be no deduction for 'Act' rights not only ignores this requirement, but also the very real value to a purchaser of a lease with Act rights. These include the certainty of the tenant being able to extend a wasting asset, the ability of the tenant to exercise that right at the time of his own choosing (subject to a two-year ownership requirement) and the possibility of removing any continuing obligation to pay ground rent.
42. The tribunal therefore considers that a deduction from short lease sales evidence to reflect 'Act' rights is correct. The evidence presented by Mr Dooley is that of a single graph. As an alternative, Mrs Mariner has argued that principles determined in *Nailrile* should be adopted. The tribunal in this case considers that the evidence of a single graph is not strong enough to endorse. Therefore, it is left with Mrs Mariner's evidence, which it reluctantly adopts.

Long leasehold relativity

43. Mrs Mariner contended for a 1% differential between the long leasehold value and the reversionary freehold value, but Mr Dooley not willing to accept such a differential without evidence.
44. The tribunal accepts that in the present case there is no currently-available evidence of a differential, such that would satisfy Mr Dooley. This is due to there being no comparable sales of leases with a share of freehold and new lease interests to refer to. Nonetheless, the tribunal prefers Mrs Mariner's opinion on this issue, as it is an accepted valuation convention to calculate the freehold value by applying, usually, a 1% differential (i.e. applying a relativity of 99% to the new extended lease value). Furthermore, the differential recognises that there is some perceived benefit to a purchaser in owning a freehold or a share of freehold, such that there would be a slight difference in value, as compared with a long leasehold interest.

The tribunal's valuation

45. When approaching the task of valuation, the tribunal considered Appendix 10 of Mrs Mariner's report, which contained comparable

sales of short leaseholds, flats 3B and 4A. Her analysis of these sales results in higher values than the subject property, even after adjusting for time (both completing three months after the valuation date).

46. Looking at the subject flat analysis and the two comparable sales, the tribunal considers that Mrs Mariner is a little low at £150,775. Adjusting the sale price to reflect the larger size of 3B, then taking a rough average of the three sales, the tribunal prefers to adopt £158,500 for the short lease value. The relativity then works out at 70.5%.
47. The tribunal's valuation is attached.

Name: Judge Timothy Powell **Date:** 24 November 2015

Appendix: Valuation setting out the Tribunal's calculations

Appendix

Valuation under Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993 of the premium payable for an extended leasehold interest in 3A Valebrook, 2 Park Avenue, Ilford, Essex IG1 4RT (case reference: LON/00AC/OLR/2014/0106):

Valuation date 11 November 2014

Unexpired term 52.6 years

Ground rent £25 pa

Capitalisation rate 8%

Deferment rate 5%

Long leasehold value

222,500

Freehold value

224,725

Short lease value

£158,500

Diminution in value of landlord's interest

Value before grant of new lease

Ground rent

£25

YP 52.6 years @ 8%

12.282

307

Reversion

F/H Value

224,725

Defer 52.6 Yrs @ 5%

0.077

17,304

17,611

Less value after grant of new lease

F/H Value

224,725

Defer 142.6 Yrs @ 5%

0.00095

213

-213

Diminution in value of landlord's interest

17,398

Marriage Value

Aggregate of values after grant of new lease

Landlord's interest

213

Tenant's proposed interest

222,500

222,713

Less Aggregate of values prior to grant of new lease

Landlord's interest

17,611

Tenant's interest

158,500

176,111

Marriage value

46,602

50%

23,301

40,699

PREMIUM

40,700