



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

Case Reference : LON/00AE/OLR/2017/0433

Property : 29 Windermere Court, Windermere Avenue,
Wembley, Middlesex, HA9 8SJ

Applicant : Ms Janet Maureen Brown

Representative : Mr John Hennessy BSc MRICS

Respondent : Daejan Properties Ltd

Representative : Mr Robin Sharp BSc FRICS

Type of Application : Enfranchisement

Tribunal Members : Judge Robert Latham
Mr Richard Shaw FRICS

**Date and venue of
Hearing** : 12 September 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 28 September 2017

DECISION

(i) The Tribunal determines that the premium payable by the Applicant in respect of the extension of her lease at 29 Windermere Court, Windermere Avenue, Wembley, Middlesex, HA9 8SJ is £50,623.

(ii) We have determined that the relativity rate is 74.36%.

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: 29 Windermere Court, Windermere Avenue, Wembley, Middlesex, HA9 8SJ;
 - (ii) Date of Tenant's Notice: 16 November 2016;
 - (iii) Valuation Date: 16 November 2016;
 - (iv) Date of Tribunal's Directions: 12 April 2017;
 - (v) Tenant's leasehold interest:
 - Date of Lease: 15 May 1985;
 - Term of Lease: 99 years from 25 March 1980, with an unexpired term of 62.35 years;
 - Ground Rent: £150pa rising to £300 on 24 March 2046;
 - (vi) Landlord: Daejan Properties Ltd;
 - (vii) Tenant: Ms Janet Maureen Brown;
 - (viii) Tenant's Proposed Premium: £32,284;
 - (ix) Landlord's Proposed Premium: £52,287.

The Hearing

3. The hearing of this application took place on 12 September 2017. The Applicant, tenant, was represented by Mr John Hennessy, BSc MRICS; the Respondent, landlord, by Mr Robin Sharp BSc FRICS. Both experts provided written reports. Both acted as advocates. We are grateful to the two experts for the assistance that they provided to the Tribunal.
4. Prior to the hearing, the parties agreed the following:
 - (i) The subject flat is a two bedroom ground floor maisonette consisting of a kitchen, bathroom, two bedrooms and a reception room.
 - (ii) Valuation Date: 16 November 2016;
 - (iii) Unexpired Term: 62.35 years.
 - (iv) Deferment Rate: 5%;
 - (v) Ground Rent: £150pa rising to £300 on 24 March 2046;
 - (vi) Capitalisation Rate: 6%.
5. The Tribunal were informed that there were three issues in dispute:
 - (i) The extended leasehold value of the flat: Mr Hennessy contended for £320,000; Mr Sharp for £338,500.

(ii) The appropriate rate for relativity: Mr Hennessy contends for 85.35%; Mr Sharp for 73.95%;

(iii) Whether a 1% differential is appropriate between the extended lease and the freehold vacant possession values: Mr Hennessy contends for no differential; Mr Sharp for a 1% differential.

6. The difference between the experts on the extended lease value was modest. The experts asked for a short adjournment after which they agreed a figure of £332,000. In the light of this agreement, Mr Hennessy revised his premium up to £33,441; Mr Sharp revised his down to £50,623.

Issue 1: Relativity

7. The following guidance on relativity is provided by the learned editors of "Hague on Leasehold Enfranchisement" (6th Ed, 2014) 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)."

8. The Upper Tribunal ("UT") has now given further guidance in the decision of *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC). This decision is to be considered by the Court of Appeal in January. The three cases considered by Mr Justice Morgan and Mr Andrew Trott FRICS involved Prime Central London. At the end of an extensive and learned judgment, the UT gave guidance for future cases at [165] – [170]:

165. First, this case was brought to provide a test of the Parthenia model. It is clear to us that the Parthenia model has failed that

test. It should not be put forward in a future case as a method of arriving at the value of an existing lease without rights under the 1993 Act.

166. Secondly, the valuations required under schedule 13 to the 1993 Act relate to market value on the statutory hypotheses. When the parties attempt to negotiate the amount of a premium in accordance with schedule 13 and when the tribunal comes to determine a dispute as to the amount of such a premium, the relevant valuation date will generally be a date in the past. The parties and the tribunal must focus on the state of the market at that date. What matters is how the market performed at that date. If the market, for example, for leases with rights under the 1993 Act at that date was influenced by certain matters, then that influence must be taken into account. For example, if the market at a date in the past was influenced by a particular graph of relativity then that influence is a market circumstance which is to be taken into account. It is not open to a party when discussing the market at a date in the past to suggest that the market was badly informed or operating illogically or inappropriately in order to invite the tribunal to replace actual market forces with what are suggested to have been more logical or appropriate considerations.

167. Thirdly, it is possible that the market might perform differently in the future from the way it has performed in the past. It is possible that in the future less weight will be given in the market to a particular graph or a new graph might emerge. If those new developments affect market behaviour then they must be taken into account when assessing market forces. It is conceivable that decisions of the tribunals might also influence valuers and in turn influence parties in the market. If that were to occur, then the changed market circumstances before a relevant valuation date must be taken into account when considering market value at that date.

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

67%. This increases to 68.22% when Mr Sharp adopts his revised freehold figure of £335,353 for the subject flat.

11. Mr Sharp recognises the shortcomings of relying on just one transaction which is historic. He therefore has regard to the following graphs which he considers to be the most reliable. These are:

(i) The Savills 2015 Enfranchisable Graph (79.8%) and the Gerald Eve 2016 Table and Graphs of Relativities (79.89%). These are exhibited as Tab 6 to his report. These give similar figures, the average being 79.85%. The drawback is that they are Prime Central London ("PCL").

(ii) Becket and Kay (2014) and (2017) which both suggest a relativity of 75%. These graphs are at Tab 4. Mr Sharp considers that these are the most reliable graphs for the suburbs. The first version of their graph which is published in the 2009 RICS Research Report was based on opinion only. Mr Sharp has obtained confirmation that the current graphs are based on both sales data and opinion.

12. Mr Sharp then takes an average of these three relativities, namely 67% (market evidence); 79.85% (PCL) and 75% (Becket and Kay) to reach a figure of 73.95%. He revised this to reflect his revised figure for market evidence of 68.22% (rather than 67%) to reach an average of 74.36%. This is the figure which he has used to compute his premium of £50,623.
13. Mr Hennessy did not have regard to the market transaction in respect of 14 Windermere Court. He considered that it was unreliable to rely upon a single transaction. He argued that "one sale does not make a market". He suggested that there were special circumstances as the sale was prompted by a matrimonial dispute in which the parties wanted a quick sale. Mr Sharp responded that this property had been advertised on Rightmove on 26 September 2013. This would suggest either that the property had been on the market for 18 months or that there had been two separate sales.
14. Mr Hennessy rather had regard to the RICS 2009 Research Report and derived the following figures from the graphs for a lease with 62.35 years unexpired: Nesbitt & Co: 85.35%; Becket & Kay: 87.13%; Austin Gray: 87.27%; Andrew Pridell: 87.41% and South East Leasehold: 90.47%. The average of these five graphs would have given a figure of 87.35%. However, Mr Hennessy preferred the Nesbitt Graph (85.35%). This was the one that other surveyors in negotiations have agreed in respect of lease extensions outside PCL. It is to be noted that the lower figure adopted would be more favourable to the landlord.

Our Determination

15. We must determine which approach we prefer. As in most cases which come before our tribunals on the issue of relativity, the evidence is far from satisfactory. The Tribunal can do no more than the best that we can on the evidence before us.
16. We have concluded that we prefer the evidence of Mr Sharp and adopt his figure of 74.36%:

(i) We accept that the market has changed significantly since October 2009. Indeed, many of the graphs included in the RICS Research paper predate 2009. The 2008 financial crisis has had a significant impact. It is now more difficult to obtain a mortgage, particularly for short leases. The loan to value ratio has changed. In April 2015, RICS raised the valuation assumption threshold for a long lease from 70 to 85 years. Mr Hennessy agreed under cross-examination that it is now more difficult to obtain a mortgage when the term is 70 years or less (see material at pp.168-171 of the Bundle). Other changes include the buy to let market, changes in mortgage tax relief, the stamp duty surcharge on second properties, a shortage of tenants and the impact of Brexit. It is not necessary to consider the respective impact of each of these factors. It is sufficient to remind ourselves that we must have regard to the state of the property market at the valuation date, namely November 2016.

(ii) There is evidence of a market transaction to which we should have regard. We accept that a single transaction should be treated with caution. However, this is the best evidence that there is of the local market.

(iii) Had Mr Sharp focused solely on the evidence from this market transaction, he would have adopted a figure of 68.22% rather than 74.36%. To have adopted the lower figure would have been more favourable to the landlord. We commend his decision to have regard to graphs as also being relevant evidence.

(iv) The significant factor in this case is that the three graphs adopted by Mr Sharp, namely (i) Savills 2015 Enfranchisable Graph (79.8%); (ii) Gerald Eve 2016 (79.89%); and (iii) Becket and Kay (2014 and 2017) (75%) are all significantly below any of the five graphs in the RICS 2009 Research Report (an average of 87.35%). The explanation for this would seem to be that there has been a significant change in the market since 2009.

(v) We readily accept that the subject flat is not in PCL. The current evidence would suggest that PCL represents an upper limit. It is probable that this market is less mortgage dependent. However, to include the Savills (2015) and Gerald Eve (2016) graphs raises the average. It would not be in the interests of the tenant to exclude them.

17. The difference between the experts reflects the significant difference between the five RICS Research Graphs (2009 and before) upon which Mr Hennessy relies and the four graphs published between 2014 and 2017 upon which Mr Sharp relies. It is to be noted that the Beckett and Kay graph in the RICS Research is dated June 2009. This gives a relativity of 87.13% for a lease with 62.35 years unexpired. Their 2014 and 2017 graphs now both lower the relativity to 75%. This cannot merely reflect the fact that the graphs are now based on both sales and opinion, rather than just opinion. The only proper conclusion is that there has been a significant change in the market between June 2009 and 2014/2017. We are obliged to have regard to that change in the market.

Issue 2: Is a 1% Uplift Required?

18. Mr Hennessy contends that there is no difference between the extended lease and the freehold vacant possession values; Mr Sharp contends for a 1% uplift. We are considering the advantage to the freeholder of the property in having a freehold interest in the subject flat as opposed to an extended lease. Neither party has referred us to any authority on the point. The point is a simple one. We accept that there are advantages to the freeholder in having a freehold interest in the subject flat in that there are no restrictions imposed by a lease. We therefore make the conventional uplift of 1%.

Conclusions

19. We make the following determinations on the three issues in dispute:
- (i) The parties have now agreed the extended leasehold value at £332,000.
 - (ii) We consider it appropriate to make a 1% uplift to compute the freehold vacant possession value.
 - (iii) We accept Mr Sharp's argument that relativity should be 74.36%. We are satisfied that his evidence best reflects the state of the local market in November 2016.
 - (iv) We compute the premium to be £50,623 based on the revised figures in the computation at Tab 1 to Mr Sharp's Report. Mr Sharp noted that there were some minor errors in his computation of the ground rent. These work in favour of the tenant. We therefore do not consider that it is necessary for his calculation to be reworked.

Judge Robert Latham
28 September 2017

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.