

4459



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

Case reference : LON/00AY/0LR/2016/1452

Property : 61 Corner Fielde, Streatham Hill,
London SW2 4TJ (“flat 61”)

Applicant : Bernard Bassey Duke and Deborah
Nerina Duke (“the tenants”)

Representative : C G Naylor LLP

Respondent : Metropolitan Properties Co (FGC)
Limited (“the landlord”)

Representative : Wallace LLP

Type of application : A new lease claim

Tribunal member : Angus Andrew
Duncan Jagger MRICS

**Date and Venue of
hearing** : 14 March 2017
10 Alfred Place, London WC1E 7LR

Date of decision : 3 April 2017

DECISIONS

Decisions

1. The extended lease value of flat 61 at the valuation date was £318,280.
2. The “no Act” existing lease value of flat 61 at the valuation date was £254,463.
3. The price to be paid for the new extended lease is £41,196 in accordance with our attached valuation.

The application and hearing

4. The tenants applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of flat 61.
5. We heard the application on 14 March 2017. The tenants were represented by Roshan Sivapalan BSc (Hons) MRICS who also gave expert evidence on their behalf. The landlord was represented by Carl Fain, a barrister. Robin Sharp FRICS gave expert evidence on the landlord’s behalf. Neither party asked us to inspect and given nature of the comparables we decided that an inspection would not assist us.

Background

6. Corner Fielde is an eight storey 1930’s purpose built block of 81 flats with lift access. Flat 61 is on the first floor and has a reception room, one bedroom, kitchen, bathroom/WC and entrance hall.
7. The majority of the flats in Corner Fielde were sold on leases for terms of 99 years from 25 December 1977 as was flat 61 although a number of new extended leases have been granted either under the Act or by agreement. The lease of flat 61 is dated 23 January 1985 and reserves an initial annual ground rent of £60 that rises every subsequent 33 years to £120 and £180.
8. On 19 April 2016 the tenants gave notice of their claim to a new extended lease. By a counter-notice dated 29 June 2016 the landlord admitted the claim. By an application dated 8 September 2016 the tenants applied to the tribunal to determine the premium and other terms of acquisition remaining in dispute.

Issues in dispute

9. The parties had agreed the following:
 - a. The valuation date at 19 April 2016
 - b. An unexpired term of 60.67 years

- c. A deferment rate of 5%
 - d. A capitalisation rate of 6%
 - e. The internal floor area at 584 square feet
 - f. Extended lease to freehold relativity of 99%
 - g. That flat 61 was unimproved
 - h. The terms of the new extended lease
10. The parties had been unable to agree the following issues:-
- a. The extended lease value.
 - b. The “without Act” existing lease value.

Mr Sivapalan’s approach

Extended lease value

11. Mr Sivapalan contended for an extended lease value of £305,000. In doing so he relied on the sale of four one bedroom flats in Corner Fielde. All the flats were sold with extended leases. He reduced the prices to a price per square foot (“psf”), adjusted for size and then adjusted for time by using the Land Registry House Price Index for the London Borough of Lambeth. These sales as presented by Mr Sivapalan are encapsulated in the following table:-

Flat No	Floor	Sale date	Internal floor area	Adjusted price psf
21	Fourth	20/5/2016	715	£497
35	Ground	16/3/2016	592	£546
52	Ground	19/5/2016	550	£500
66	Second	10/6/2016	604	£578

12. Having considered all four comparable sales Mr Sivapalan relied on the sales of 35 and 52 because they are nearest to the valuation date and the flats are similar in size to flat 61. This gave Mr Sivapalan a price psf of £523 that, when applied to flat 61, gives an extended lease value of £305,000 and a freehold value of £308,050.

“Without Act” existing lease value

13. Mr Sivapalan established relativity by comparing the sales of the following two flats:-

Flat No	Floor	Sale date	Lease length	Internal floor area	Sale price
12a	First	29/4/16	60.67 yrs	732	£310,000
21	Fourth	20/5/16	111 yrs	715	£355,000

14. Mr Sivapalan then discounted the short lease sale price of flat 12a by 4.76% to reflect the value of the act rights. This was the difference between the 2002 Savills Enfranchisable Graph and the 1996 Gerald Eve graph. In short he adopted the methodology used by the Upper Tribunal in Earl

Cadogan v Cadogan Square Ltd [2011] UKUT 154. This deduction gave Mr Sivapalan a without Act short lease value of £295,914 and a short lease to long lease relativity of 83.35%.

15. As a cross check he considered the relativity graphs in the RICS Research Report of October 2009. An average of the five Greater London and England Graphs gives relativity of 86.38%. Of these graphs he considered the most relevant to be the Nesbitt graph that gives relativity of 83.67%. He considered that these relativities supported his market evidence that he adopted.
16. Applying relativity 83.35% to the freehold value gave Mr Sivapalan a “without Act” existing lease value of £256,760 and a valuation of £33,058.

Mr Sharp’s approach

Extended lease value

17. In contending for an extended lease value of £329,500 Mr Sharp relied on the sales of flats 35, 52 and 66. He adjusted for time by using the Land Registry House Price Index for the London Borough of Lambeth.
18. He made an upward adjustment of 0.5% to the sale price of flat 35 to reflect onerous rent review provisions that fixed the reviewed rent at 25 year intervals by reference to the then value of the flat.
19. He adjusted the sale price of flat 52 for size and then made an upward adjustment of 0.5% to reflect the perceived advantage of a first floor flat, flat 52 being on the ground floor. Finally he made an upward adjustment of 10% to reflect his view that flat 52 was in below average condition.
20. Turning to flat 66 he made two adjustments. He made a downward adjustment of £10,000 to reflect his view that flat 66 was recently refurbished. Finally he made a downward adjustment of 0.5% to reflect the perceived advantage of flat 66’s second floor location.
21. These adjustments resulted in sale prices for the 3 flats of £326,456 (35), £322,806 (52) and £337,852 (66). An average of the adjusted sale prices is £329,038, which Mr Sharp rounded up to give an extended lease value of £329,500 and a freehold value of £332,828.

“Without Act” existing lease value

22. Mr Sharp’s approach was not dissimilar to Mr Sivapalan’s but he relied on different market evidence and by way of a check, different relativity graphs.
23. He compared the sale of flat 53 with the sale of flat 56. Flat 53 sold on 5 June 2013 for £139,000 with a similar if not identical lease to flat 61. Flat 56 sold on 5 February 2014 for £200,000 with a 125 year lease from 24

June 2002 that included rent review provisions that were the same as those for flat 52.

24. Mr Sharp then reduced the sale price of flat 53 by 10% to reflect his assessment of the value of the "Act rights". In doing so he relied on a number of previous first-tier tribunal decisions and concluded that "10% is a general view that I take". This gave Mr Sharp a "without Act" value of £125,100.
25. Turning to flat 56 Mr Sharp made a number of adjustments the minutiae of which were not entirely transparent. He adjusted for time and made a 5% adjustment for size. He also made an upward adjustment of 0.5% to reflect the onerous rent review provisions that were the same as those in the lease of flat 52. These adjustments gave Mr Sharp a freehold value of £188,632 and relativity of 66.32% for an unexpired lease length of 63.5 years. Mr Sharp then reduced that relativity by 0.6% per year to give relativity of 64.60% for 60.67 years unexpired although it was not clear how he arrived at the reduction of 0.6% per year.
26. Mr Sharp then turned to the graphs. He considered that since the financial crash of 2008 relativity produced by the market is below the graph lines produced by the RICS Research Report of October 2009. Having rejected the graphs in the RICS Research Report Mr Sharp turned to the 2014 Beckett and Kay graph because it is based on more recent mortgage dependant transactions. The Beckett and Kay graph gives relativity of 71% at 60 years.
27. Mr Sharp took an average of his two relativities of 64.60% and 71% to reach 67.8%. That in turn gave him a "no Act" existing lease value of £225,657 and a valuation of £61,498.

Reasons for our decision

The extended lease value

28. Flat 21 is very different in both size and shape to flat 61 and it is not a reliable comparable. The other three flats (35, 52 and 66) are of a similar size and shape: all three sales were within a few months of the valuation date and we adopt them as appropriate comparables.
29. We adjust for time using the Land Registry House Price Index for the London Borough of Lambeth that was used by both valuers.
30. We agree with Mr Sharp that the onerous ground rent reserved by flat 35 will reduce the flat's value. Even if an initial offer did not reflect the disadvantage an informed buyer would reduce its offer upon receipt of a solicitor's report on title. The amount of any reduction is speculative but in the absence of any other evidence we accept Mr Sharp's adjustment of 0.5%.

31. We agree with Mr Sharp that ground floor flats have disadvantages in terms of security and privacy that will reduce their values in relation to the flats on the upper floors. Again we accept his adjustment of 0.5% that is consistent with our experience. We do not however accept his assertion that second floor flats will command higher prices than first floor flats. Flats on higher floors may have slightly better views but they are a little less accessible and in a development of this type the two factors will generally balance out.
32. Equally we are not persuaded that flat 52 was in worse condition than flat 61 thus warranting an upward adjustment of 10% to the sale price. Mr Sharp justified the adjustment on the basis of a comment in the agent's particulars that "*some updating*" was now required. The same could doubtless be said of flat 61 the condition of which was agreed to be "unimproved". The photographs of flat 52 in the agents' particulars show a perfectly serviceable flat in good decorative condition.
33. Conversely we accept Mr Sharp's 10% adjustment to the sale price of flat 66 because it is apparent from the agent's particulars that the flat had been newly refurbished with modern fittings.
34. Finally there was a difference of opinion about the net internal area of flat 66. Mr Sivapalan used 604 square feet that was taken from the agent's particulars. Mr Sharp used 584 square feet because flat 66 is immediately above flat 61 and has the same footprint. We agree with Mr Sharp's reasoning. The valuers had measured flat 61 and had agreed the area at 584 square feet. Flat 66 did indeed have the same footprint and the valuers' agreed measurement was to be preferred to an estate agents plan that referred to the "*approximate*" area. The likely explanation for the difference was that the agents had included ground floor cupboards and/or alcoves that would usually be excluded.
35. Our analysis of the three comparable sales is set out in the following tables:-

Flat No	Sale price	Time adjusted	Add 0.5% for Ground rent	Add 0.5% for floor	Deduct for condition
35	350,000	323,216	1,616	1,616	
52	275,000	275,117		1,376	
66	350,000	349,610			10,000

Flat No	Adjusted price	Internal floor area	Price psf	Internal floor area of flat 61	Extended lease value of flat 61
35	326,448	592	551		
52	276,493	550	503		
66	339,610	584	582		
		Average	£545		
61				584	£318,280

36. Applying the agreed extended lease to freehold relativity of 99% gives a freehold value of £321,494.

“Without Act” existing lease value

37. We accept the broad methodology adopted by both valuers. That is the use of market evidence to calculate the existing lease value with a deduction for the “Act rights” whilst using the relativity graphs as a check to ensure consistency.
38. Flats 12a and 21 relied on by Mr Sivapalan were the same size but both were some 25% larger than flat 61. Flats 53 and 56 relied on by Mr Sharp were sold well over two years before the valuation date, flat 53 having been sold nearly 3 years before the valuation date.
39. Given the choice of comparables to establish relativity we prefer the evidence of Mr Sivapalan because whilst it is possible that relativity may vary over time we have never heard it suggested that it varies by flat size and Mr Sharp did not assert that it does. Conversely one of his arguments for rejecting the graphs was that relativity has reduced over time. To put it another way the risk of using two old sales to establish relativity outweighs the risk of using two recent sales of similar sized flats that are larger than flat 61.
40. The short lease sale price of 12a must be discounted to reflect the value of the Act rights. In answer to Mr Fain’s questions Mr Sivapalan accepted that the methodology used to calculate the Act rights in the Cadogan Square case was superseded by the publication of Savills Enfranchisable (2015) Graph that was presaged by the Mundy decision. He conceded that if he had used the 2015 graph the correct deduction for the Act rights would have been 5.89%.
41. Mr Sivapalan also conceded that the Act rights were more relatively valuable in suburban London than in Prime Central London (“PCL”) in large measure because PCL is “less mortgage dependant” than suburban London. However he saw no other mathematical means of calculating the Act rights. In short Mr Sivapalan conceded that the Act rights warranted a deduction of more than 5.89% but he could say how much more.
42. Mr Sharp’s evidence was equally problematical. His bald assertion that “10% is a general view that I take” does not inspire confidence and was unsupported by any empirical evidence. Equally we do not find other first-tier tribunal decisions to be of any assistance. All such decisions turns on the evidence produced to the tribunal in the particular case as this decision does. Indeed there seemed to be circularity in Mr Sharp’s evidence. The other decisions on which he relied related to blocks owned by his clients. He had given evidence in those cases and it seems that the decisions largely reflected his view that 10% was the right answer.

43. We do not criticise either valuer for their evidence. The Upper Tribunal had in both the Cadogan Square and Mundy decisions understandably preferred market evidence to the much criticised relativity graphs. However in adopting that approach it has created a problem that is as intractable as the one that it sought to resolve, at least outside PCL: that is the valuation of the Act rights for any given lease length.
44. In this case all that we can say with certainty is that the deduction for the Act rights must be more than 5.89% and cannot be more than 10%. We adopt 8% not because it is necessarily the correct answer but because it is consistent with the evidence before us.
45. As with flat 35 we have made an adjustment of 0.5% to the sale price of 12a to reflect the onerous ground rent provisions in the lease.
46. There was a difference of opinion about the description of the two flats. Mr Sharp pointed out that the agent's particulars describe flat 12a as a two bedroom flat whereas flat 21 is described as a "*stunning one bedroom*" flat. However both flats have an identical footprint. The additional bedroom in flat 12a is accounted for by the use of an entrance hall as a reception room. Equally the use of the word "*stunning*" in relation to flat 21 appears from the photographs to be no more than inventive marketing. Fundamentally they are identical flats requiring no condition adjustments.
47. Our analysis of the sales of flats 12a and 21 is set out in the following tables-

Flat No	Sale price	Deduct 8% for Act rights	Add 0.5% for ground rent	Add 1% to freehold	Adjusted sale price
12a	310,000	24,800			285,200
21	355,000		1,775	3,568	360,343
				Relativity	79.15%

48. Finally we turn briefly to the relativity graphs and deal firstly with Mr Sharp's use of the 2014 Beckett and Kay graph. His confidence in the graph was based largely on a short email exchange between himself and an employee of Beckett and Kay that he exhibited. That email confirms that the 2014 graph "*is based on sales data and opinion*". Which sales data and what opinion are not explained. In answer to our questions Mr Sharp accepted that the graph must include the firm's assessment of the value of the "Act rights" but he could not explain how the assessment was made. He agreed that if Beckett and Kay had over valued the Act rights the graph would be no more reliable than any other graph.
49. Although it is reasonable to take the 2014 Beckett and Kay graph into account it would be unwise to use it to the exclusion of the other graphs. At 60 years the Greater London and England graphs range from 71% (2014 Beckett and Kay) to 90% (South East Leasehold). Our relativity of 79.15%

falls comfortably within that range and we adopt it. That relativity gives a “no Act” existing lease value of £254,463.

Conclusion

50. We therefore value the premium to be paid at £41,196 in accordance with our valuation attached.

Name: Angus Andrew

Date: 3 April 2017

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 A**61 Corner Fielde Streatham Hill SW2 4TH****The Tribunal's Valuation****Assessment of the premium for a lease extension****In accordance with Leasehold Reform, Housing and Urban Development Act 1993****LON/00AY/OLR/2016/1452****Components**

Valuation date:	21 ST April 2016	
Yield for ground rent:	6%	
Deferment rate:	5.0%	
Long lease value	£318,280	
Freehold value	£321,494	
Existing leasehold value	£254,463	
Relativity	79.15 %	
Unexpired Term	60.67 years	
Ground rent currently receivable	£120	
Capitalised @ 6% for 27.67 years	13.3429	£1,601
Future Ground rent	£180	
Capitalised @ 6% for 33 years	14.2302	
PV £1 deferred 27.67 years	0.1994	<u>£511</u>
		£2,112
Reversion to:	£321,494	
Deferred 60.67 years @ 5%	0.0518	<u>£16,653</u>
Freeholder's Present Interest		£18,765
Landlords interest after grant of new lease	£317,463	
PV of £1 after reversion @ 5% 0.0006	£190	£18,575
Marriage Value		
Extended lease value	£318,280	
Plus freehold reversion	<u>190</u>	
	£318,470	
Landlord's existing value	£18,765	
Existing leasehold value	<u>£254,463</u>	
	£273,228	
Marriage Value	£45,242	
Freeholders share @ 50%		£22,621
LEASE EXTENSION PREMIUM		<u>£41,196</u>