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18 FEB 2019

**Property Chamber
London Residential Property
First-tier Tribunal**

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Your ref:146/T/107244.0001
Our ref:GM/LON/00AF/OLR/2018/1285

Date:15 February 2019

Dear Sirs

RE: Leasehold Reform, Housing & Urban Development Act 1993 - Section 48

PREMISES: 31 Anerley Park, Penge, London, SE20 8NN

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy is being sent to all other parties to the proceedings.

Any application from a party for permission to appeal to the Upper Tribunal (Lands Chamber) must normally be made to the Tribunal within 28 days of the date of this letter. If the Tribunal refuses permission to appeal you have the right to seek permission from the Upper Tribunal (Lands Chamber) itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours faithfully

**Mr Gamal Mike
Case Officer**

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
 - the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
 - The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.
- You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL*

Tel: 0207 612 9710

Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.gov.uk/appeal-upper-tribunal-lands.



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

Case reference : **LON/00AF/OLR/2018/1285**

Property : **Flat 31 Anerley Court, Anerley Park,
Penge, London SE20 8NN**

Applicant : **Ms Amanda Clayton**

Representative : **Battens, solicitors**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

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

Tribunal members : **Judge Pittaway
Mr W R Shaw FRICS**

**Date of hearing and
venue** : **29 January 2019 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **7 February 2019**

DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£20,182**.

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 lease of Flat 31 Anerley Court, Anerley Park, London SE20 8NN (the "**property**").
2. By a notice of a claim dated 25 April 2018, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the property. At the time, the applicant held the existing lease granted on 25 March 1994 for a term of 99 years from 24 June 1992 at an initial annual ground rent of £75, rising to £150 on 24 June 2025 and to £300 on 24 June 2058. The applicant proposed to pay a premium of £11,000 for the new lease.
3. On 25 April 2018, the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £33,400 for the grant of a new lease. The respondent landlord is the intermediate landlord of the property under a lease of Flats 25 to 32 Anerley Court dated 29 March 2010 for a term of 999 years from 29 March 2010.
4. On 5 October 2018 the applicant applied to the tribunal for a determination of the premium payable for the new lease.

The issues

Matters agreed

5. The following matters were agreed by 13 December 2018:
 - (a) The valuation date: 23 February 2018;
 - (b) Unexpired term: 73.3 years;
 - (c) Ground rent: £75 pa until June 2025 when it increases to £150 for the next 33 years and then £300 for the remainder of the term;
 - (d) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value;
 - (e) Capitalisation of ground rent: 6% per annum; and
 - (f) Deferment rate: 5%.
6. By the date of the hearing the long leasehold (unimproved) interest had also been agreed, at £331,000, and the freehold value at £334,343.

Matters not agreed

7. The following matters were not agreed:
 - (a) The “no-Act world” short leasehold (unimproved) value: the applicant contending at the hearing for £309,067 and the respondent contending for £289,374; and
 - (b) The premium payable.

The hearing

8. The hearing in this matter took place on 29 January 2019.
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 R Murphy Dip Surv; MRICS of Richard John Clarke surveyors dated 17 January 2019 and the respondent relied upon the expert report and valuation of Mr R D Sharp BSc FRICS dated 13 January 2019 and the tribunal heard evidence from both valuers. This evidence and the submissions, as relevant, are referred to below. Various cases were also referred to and as appropriate these are also referred to below.
11. Both valuers agreed that following the decision in *Sloane Stanley Estate v Mundy* [2016] UKUT 0226 (LC). (“**Mundy**”) that the preferred method of establishing the value of the existing lease was to look for evidence of market transactions at or around the valuation date, with an appropriate deduction being made to reflect the statutory hypothesis that the existing lease does not have rights under the Act. The valuers were also agreed that there was no relevant market evidence.
12. In such circumstances the valuers also agreed that in the absence of such evidence Mundy permits reference to graphs of relativity with an appropriate deduction being made if that graph does not make a deduction from that value to reflect the absence of statutory rights.
13. Mr Murphy relied on the relativity contained in the graphs for Greater London and England contained in section 2 of the RICS Research Report 2009 ; namely Beckett and Kay, South East Leasehold, Nesbitt and Co, Austin Gray and Andrew Pridell Associates. He pointed to the close range between all these graphs (from 92.66% to 95.55%) and the average they gave of 94.22%, which he took as his starting point. He accepted that none of these graphs individually was free from criticism; Beckett and Kay for being opinion driven, South East Leasehold for being parochial (although close to the location of the property),

Nesbitt and Austin Gray for being too dependent upon evidence derived from settlements and tribunal decisions and Andrew Pridell for being based on south east coast and not suburban London. Mr Murphy relied on the decision in *Cooltrace Limited* [2012] UKUT 69 (LC) as the basis for taking the average of the five graphs (“**Graph Average**”)

14. Mr Murphy disregarded the graphs for Prime Central London as the existence of a number of large landlords has resulted in tenacious negotiations on their behalf, resulting in the relative value of short leases being driven down by the need to pay higher premiums for lease extensions. Mr Murphy also considered, but disregarded, the graphs of the College of Estate Managements Graph (94.7%) and the Leasehold Advice Service Graph (94.5%) because they did not use market evidence and relied on tribunal decisions.
15. Turning to the graphs published since the RICS Research Report was published, Mr Murphy discounted the Leasehold Valuers Graph of 2017 (93.22%), for being affected by the “Delaforce effect”; and the Tribunal Graph produced by John D Wood (91.81%) for being mainly derived from tribunal cases relating to Prime Central London. He discounted the Beckett and Kay graphs (87%) (the most recent published in 2017) due to the disparity between this relativity and that in their previous graph (94.12%), that there is no published explanation of the data and that it is based on relatively few transactions.
16. Mr Murphy also invited the tribunal to have regard to the previous tribunal decision in relation to the property (LON/00AQF/OLR/2016/0706) which adopted the average of the five graphs approach.
17. Mr Murphy then considered the effect of the financial crash on relativity. In order to assess how much relativities had fallen Mr Murphy referred the tribunal to the Savills 2002 and Savills 2015 Enfranchisable graphs. These show a difference in relativity of 1.87% for leases with unexpired terms of 75 years, and of 1.91% for leases with unexpired terms of 70 years between the Savills graphs of 2002 and 2015. Mr Murphy has assumed that the difference is due to changes in relativity rather than a change in methodology. He has therefore applied this difference to the Graph Average to arrive at a relativity of 92.44%. Applying this relativity to the agreed factors he arrives at a premium of £16,696.
18. Mr Sharp has relied upon the graph considered reliable by the Upper Tribunal in Mundy (namely Savills 2015; 86.25%), the Gerald Eve 2016 graph (86.9%) and, because both these graphs relate to Prime Central London, the Beckett and Kay graph of 2017 (86.5%). Taking an average of these he adopts a relativity of 86.55%. He referred the tribunal to the decision in 21 Hazelmere Gardens (LON/00BF/OLR/2018/0916) as a case where a tribunal had adopted an average of these three graphs.
19. Mr Sharp referred to the decisions in *Mallory v Orchardbase Ltd* [2016] WL 06639488 and *Reiss v Ironhawk Ltd* [2018] UKUT 0311 (LC) as cases in which the Upper Tribunal decided relativities below those in the Savills 2015 graphs.

The tribunal’s determination

20. Having regard to the evidence provided and submissions made by the valuers the tribunal determines, for the reasons given below, that an appropriate relativity to be adopted in ascertaining the premium is **90.36%**

Reasons for the tribunal's determination

21. The tribunal agree that Mr Murphy's approach of adopting the Graph Average and then adjusting it for the financial crash is an acceptable approach. It is however concerned that the means that Mr Murphy has adopted to make the adjustment is by reference to a **change** in relativities in Prime Central London, when he has not considered evidence from Prime Central London to be applicable to the property.
22. The tribunal agree that it is possible to look to the graphs for Prime Central London and then adjust these for a property not in that area. While noting the decision in 21 Hazelmere Gardens it is however concerned that Mr Sharp's approach takes no account of the accepted distinction to be made between short leases in Prime Central London and elsewhere, which Mr Sharp touched on. Further the alternative basis of valuation proposed in 21 Hazelmere Gardens was not the same as that proposed by Mr Murphy in this case.
23. In the circumstances of this case the tribunal do not consider that either valuer's approach pays sufficient attention to all relevant factors. It is concerned that Mr Murphy's adjustment for the financial crash is by reference to a differential that has been recorded in Prime Central London property; and that Mr Sharp has not considered the lack of differentiation between Prime Central London and elsewhere in the relativities upon which he has relied.
24. The tribunal acknowledges the shortcomings of the underlying graphs that produce the Graph Average but on balance prefer to take them as a starting point, rather than the Prime Central London graphs used by Mr Sharp. The tribunal agrees that relativity has changed since the graphs that give the Graph Average were prepared. It is therefore necessary to consider the most appropriate method of adjusting the Graph Average to reflect this.
25. The tribunal are not satisfied that adopting a Prime Central London difference, obtained from the Savills' graphs, and applying it to the Graph Average is appropriate.
26. The only relevant evidence it is left with is therefore the Beckett and Kay 2017 graph. The tribunal would not wish to adopt the Beckett and Kay 2017 graph without qualification in light of the doubt cast on it by Mr Murphy by reason of a lack of published explanation of the data and that it is based on relatively few transactions.
27. The tribunal has therefore had regard to the Beckett and Kay 2017 relativity graph as it relates to the Graph Average; and has averaged it with the Graph Average to achieve a relativity of 90.36%.

The premium

28. The tribunal determines the appropriate premium to be £20,182. A copy of its valuation calculation is annexed to this decision.

Name: Judge Pittaway

Date: 7 February 2019

Appendix: Valuation setting out the tribunal's calculations

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 1			
New Lease Claim		Valuation date	23/02/2018		
Unexpired	73.3 yrs				
Freehold	£334,343	Long lease	£331,000		
Relativity	90.36%	Existing lease	£302,112		
	YP 6.00%		PV 5%		
Diminution in value of landlord's interest					
Value before grant of new lease					
Term					
Rent			75		
		YP 7.3 yrs @ 6%	5.77	434	
Rent			150		
		YP 33 yrs @ 6%	14.23		
		Deferred 7.3 yrs @ 6%	0.654	1,392	
Rent			300		
		YP 33 yrs @ 6%	14.23		
		Deferred 40.3 yrs @ 6%	0.096	406	
					2,232
Reversion					
Flat value (FHVP)			334,343		
		Deferred 73.3 yrs @ 5%	0.028	9,362	
					11,594
LESS value after grant of new lease					
Term		Deferred 163.3 yrs @ 5%	0.00035		-117
New lease at a peppercorn rent					
Diminution in value of landlord's interest					
11,477					
Marriage value					
Aggregate of values of interests after grant of new lease					
Landlord's interest		117			
Tenant's interest		331,000			
			331,117		
Less Aggregate of values prior to grant of new lease					
Landlord's interest		11,594			
Tenant's interest		302,112			
			313,706		
		Marriage value	17,411		
				50%	8,705
				Premium	20,182