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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/OLR/2014/0762**
Property	:	**52 Cheston Avenue, Croydon, Surrey CR0 8DB**
Applicant	:	**Jill Keehan & Margaret Britt**
Representative	:	**Thackray Williams LLP, solicitors**
Appearance at hearing	:	**Mr John Card FRICS**
Respondent	:	**The Honourable Robin Lawrence Dundas**
Representative	:	**Forsters LLP, solicitors**
Appearance at hearing	:	**Ms Karolina Tolygyesi MRICS**
Type of application	:	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	:	**Judge Timothy Powell** **Mr Duncan Jagger MRICS**
Date of determination and venue	:	**16 September 2014 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2 October 2014**

DECISION

Summary of the tribunal's decisions

(1) The appropriate relativity is 87.5%; and

(2) The appropriate premium payable for the new lease is £17,305.

Background

1. This is an application made by the applicant leaseholders, Ms Jill Keehan and Ms Margaret Britt, 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 by them for the grant of a new lease of 52 Cheston Avenue, Croydon, Surrey CR0 8DB (the "Property").

2. By a notice of a claim dated 17 October 2013, served pursuant to section 42 of the Act, the applicants exercised their right for the grant of a new lease in respect of the subject Property. At the time, the applicants held the existing lease granted on 21 July 1983 for a term of 99 years from 25 March 1983 at a ground rent of £25 per annum increasing by £25 every 15 years to £175. The applicants proposed to pay a premium of £16,000 for the new lease.

3. On 11 December 2013, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £28,500 for the grant of a new lease.

4. On 16 May 2014, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:

   (a) Valuation date: 17 October 2013;

   (b) Unexpired term: 68.43 years;

   (c) Long leasehold value: £220,000;

   (d) Freehold value: £222,222;

   (e) Capitalisation of ground rent: 7% per annum; and

   (f) Deferment rate for the reversion: 5%.

Matters not agreed

6. The only matter not agreed was leasehold relativity and, following on from that, the value of the current lease and the price payable. The parties' respective positions were:

   (a) Leasehold relativity:

Applicant:	92%
Respondent:	81.5%

   (b) Value of the current lease:

Applicant:	£204,444
Respondent:	£181,111

   (c) Price payable:

Applicant:	£12,300
Respondent:	£24,000

The property

7. Neither party requested an inspection and the tribunal did not consider that one was necessary.

8. According to the parties' agreed statement, the property is a two-storey 1930s semi-detached property consisting of two maisonettes (one at ground floor and one at first floor level) on the Zetland Estate (known locally as "the Parkfields Estate") (in this decision: "the Estate"), which consists of just over 150 virtually identical maisonettes. The roads within the Estate are part of Wickham Road and part of Cheston Avenue. Typically, the ground floor maisonettes have demised the front section of the front garden and the rear section of the rear garden, with the ground floor maisonettes having the half-gardens immediately adjoining the front and back of the properties. The subject Property is typical in this regard, and located facing Parkfield recreational ground.

9. The maisonette is on the ground floor of the Property and consists of entrance hall, two bedrooms, bathroom/WC, living room, kitchen and lean-to (a lessee's improvement). The agreed gross internal area is $60.58m^2$. Photographs and a floor plan were provided in the agreed statement.

10. The surveyors agreed that, in terms of value, there was no difference between ground floor and first floor maisonettes; though agreed

adjustments should be made to reflect different locations of properties within the Estate.

The hearing

11. The hearing in this matter took place on 16 September 2014. The applicant was represented by Mr John Card FRICS and the respondent by Ms Karolina Tolgyesi MRICS, with Mr Jack Parker observing.

12. The applicant relied upon the expert report and valuation of Mr Card dated 5 September 2014 and the respondent relied upon the expert report and valuation of Ms Tolgyesi dated 4 September 2014. Ms Tolgyesi's report was accompanied by two full lever arch files, mostly containing details of settlement and sales transactions on the Zetland Estate since 2006. Both experts introduced additional documents during the hearing, to which the tribunal was referred.

13. During the hearing, it became clear that some of the figures relied upon by Ms Tolgyesi were incorrect. The tribunal therefore gave her time after the hearing to check and correct the figures, and she lodged replacement pages to her bundles of evidence a few days later, on 19 September. The tribunal also received a letter from Mr Card, dated 18 September, relating to the weight that should be given to the parties' respective evidence, as presented to the tribunal, and a letter dated 23 September from the respondent's solicitors asking the tribunal to disregard Mr Card's further comments.

Leasehold relativity

14. By applying a percentage to the agreed freehold vacant possession value of the subject maisonette, £222,222, it is possible to determine the value of the unexpired term of the existing lease to that property, a necessary component of the statutory formula used to determine the premium payable for a lease extension under the 1993 Act.

15. The use of relativity percentages is a standard valuation technique, though there is little, if any, agreement over the appropriate adjustment for leases of different lengths or the most appropriate method of determining relativity. In this case, the parties contended for different relativity percentages (which would tend to lower or increase the premium payable, as the case may be) and the tribunal was presented with two different approaches to deciding the appropriate percentage to apply.

Mr Card's approach

16. Mr Card's starting point was the relativity graphs for Greater London and England in Section 2 of the RICS report published in October

2009. Of those, he discounted the Beckett and Kay mortgage-dependent graph, which he said was based on opinion rather than evidence. Mr Card also expressed his view that properties on the Estate are not mortgage-dependent, as the maisonettes attract "down-sizers" who are cash purchasers, i.e. elderly purchasers currently living in much larger properties with no mortgage, who wished to down-size. In any event, he said, whether or not a sale is mortgage-dependent will be reflected in the sale price; and so there was no need to have a separate "mortgage-dependent" graph.

17. Of the other four graphs in the RICS report, Mr Card preferred the South East Leasehold graph as this covered the territory in which the subject property was situated, it was based purely on market evidence and it was "not tainted by settlements". As that graph gave a relativity figure of 92.4%, in Mr Card's professional opinion 92% was a reasonable relativity figure to adopt, and this is the one he had used in his valuation.

18. Mr Card was aware of concerns relating to the South East Leasehold graph, in particular that the data was compiled as long ago as 1997 and that it takes no account of the "no-Act world". He therefore carried out an analysis of the most three recent comparable market transactions, to check that the South East Leasehold graph was still relevant and that his proposed relativity figure of 92% was reasonable.

19. Mr Card analysed three sales of similar properties on similar short leases:

    (i) 117 Cheston Avenue, CR0 8DF is a first floor maisonette which sold at £209,500 and completed on 17 April 2014. This was a cash purchase. Having made adjustments for location and time, the adjusted sale price was £240,996 which, Mr Card said, equated to a relativity of 89.10% of the adjusted freehold value.;

    (ii) 471 Wickham Road, CR0 8DG is a first floor maisonette, which sold at £190,000 and completed on 14 April 2014. This property was in poor order requiring refurbishment, for which Mr Card allowed an adjustment of £20,000. Further adjustment for location and time produced an adjusted figure of £240,996, which equated to a relativity of 91.49% of the adjusted freehold value; and

    (iii) 120 Cheston Avenue, CRO0 8DD is a first floor maisonette, which sold at £218,000 and completed on 7 February 2014. This property was in good condition. After adjusting for location and time a figure of £234,919 was produced, which equated to a relativity figure of 95.12% against the adjusted freehold value.

20. At the time of sale the three properties had unexpired terms of 67.93, 67.94 and 68.12 years respectively, compared with 68.43 years

unexpired in the subject property. According to Mr Card, the average relativities of the above three properties was 91.90%.

21. Mr Card sought to make further comparisons with sales of properties with extended leases and with properties outside of the Estate, although on cross-examination many of these were withdrawn. Overall, Mr Card's analysis led him to conclude that the South East Leasehold graph was still relevant and his proposed relativity figure of 92% was reasonable, leading to a valuation of £12,500 as the premium for the new lease (reduced from the £16,000 first proposed in the initial notice).

Ms Tolgyesi's approach

22. Ms Tolgyesi joined Beckett and Kay chartered surveyors in 2005 and has been involved in sales on the Estate since 2006. During this time she has accumulated a large body of evidence, which includes some 37 sales, 41 settlements and 5 first-instance tribunal determinations. Her expert's report ran to 41 pages and it had 21 appendices, containing a further 102 pages. In addition, details of all of the comparable properties, plus spreadsheet analysis and graphs, were contained in two full lever arch files containing some 770 additional pages.

23. Ms Tolgyesi considered that the Zetland Estate was a mortgage-dependent area and her report included evidence about changes to mortgage lending since the economic crisis in 2008 which, in her opinion, had greatly affected the market. Having analysed all of the above transactions, Ms Tolgyesi used the evidence to update and revise the original Beckett and Kay mortgage-dependent graph as it stood in 2006 (as published by the RICS in 2009), plotting the more recent transactions on the Estate and producing a revised graph. That revised graph was hand drawn and based on the mid-point of two clusters of post-2008 relativities, themselves based on the 2009-2014 sales on the Estate.

24. Considering the transactional evidence and the revised graph that resulted, Ms Tolgyesi arrived "at a conclusion that the change in the economy has affected the market and, as a consequence, relativities have changed. A dramatic increase in risk aversion amongst lenders has depressed the relativity curve at medium terms unexpired, such terms being looked at as a risk factor" (paragraph 1.3.7 of her report).

25. A copy of the new "Beckett and Kay mortgage-dependent graph (2014 first revision)" appeared at Appendix 1 of Ms Tolgyesi's report, and she used it to deduce that the appropriate relativity for an expired term of 68.43 years was 81.5%.

26. Ms Tolgyesi's analysis of all the market sales from 2006 appeared at pages 13 and 14 of her report but, unfortunately, several of the relativity figures for the most recent transactions were incorrect. At page 18 of her report, she analysed market sales of properties with similar unexpired lease terms to the subject Property, occurring within a year from the date of valuation, but these included a number of long lease sales and, once again, several of the resulting relativity figures were inaccurate.

27. Ms Tolgyesi was provided with an opportunity to correct her analyses after the hearing and replacement pages to her reports, together with replacement spreadsheets and graphs, were received by the tribunal a few days later.

28. The revised analysis at page 18 of her report included the sales of 117 and 120 Cheston Avenue and 471 Wickham Road (the same three market comparables relied upon by Mr Card), but the revised average relativity of the three properties in Mr Tolgyesi report was 85.14%. This figure was up from the 84.67% in the original report, but lower than Mr Card's 91.90% for the same three properties. When asked by the tribunal, Mr Tolgyesi said that she was not relying on that relativity figure, but she provided the analysis merely to illustrate what was happening in the mortgage-dependent area that was the Zetland Estate. In her view, the correct relativity would be found by utilising the graph which she had prepared from all of the transactions, which produced a relativity of 81.5%.

The tribunal's decision

29. The tribunal determines the appropriate relativity is 87.5% and that, therefore, the appropriate premium payable for the new lease is £17,305. A copy of our valuation calculation is annexed to this decision.

Reasons for the tribunal's decision

30. Both surveyors were misguided in their approach to the calculation of relativity in this case. Mr Card's approach was to look at the South East Leasehold graph in the 2009 RICS report, find the appropriate relativity figure and then check market transactions to confirm that the graph was still reliable. Ms Tolgyesi analysed transactions over a considerable period of time on the Estate, hand plotted a graph as a result and used the graph to produce her proposed relativity figure.

31. The correct approach is that set out in the Lands Tribunal decisions in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39 and *Nailrile Ltd v Cadogan* [2009] 2 EGLR 151, namely to consider first any available evidence of similar short lease sales in the open market,

but have reference to graphs of relativity if such market evidence is inadequate.

32. In fairness to the expert surveyors, both agreed that sales evidence should be the primary type of transactional evidence to rely on. Ms Tolgyesi therefore spared the tribunal having to look at the hundreds of pages of settlement evidence that she produced (and in a future case she may wish to exclude such evidence altogether, given the huge amount of paper it consumed).

33. Mr Card's transactional evidence of properties outside the Estate was of no real value to the tribunal because the properties concerned were so dissimilar to the subject property.

34. In their different ways, both experts analysed the three most recent short leasehold sales after the valuation date, i.e. 117 and 120 Cheston Avenue and 471 Wickham Road, and these seemed to the tribunal to be particularly good comparables in terms of location, lease length and condition. One was a cash purchase and two were with the benefit of a mortgage: facts which seemed to undermine Ms Tolgyesi's submissions that this was a mortgage-dependent area where her mortgage-dependent graph should be relied upon.

35. Ms Tolgyesi had presented an impressive amount of evidence. However, although it was very wide-ranging, there were a number of anomalies which were discussed during the hearing, which the tribunal considered arose from having analysed transactions for such a small area. Although Ms Tolgyesi said she had dealt with the anomalies by taking the mid-point, these and the flaws in the original calculations, although subsequently corrected, led the tribunal to question how much reliance it could place on the graph that resulted. Even when corrected replacement pages were submitted by Ms Tolgyesi after the hearing, there still appeared to be flaws. For example, the leasehold price for 471 Wickham Road did not appear to take into account the allowance of £10,000 that Ms Tolgyesi had proposed for the cost of refurbishment.

36. Although the 2014 revised Beckett and Kay graph contains a basket of transactions, it remains a mix of sales and opinion evidence (paragraph 8.14 of Ms Tolgyesi's report) and the graph suffers from being hand drawn and based on the mid-point of two clusters of post-2008 activity. Although Ms Tolgyesi has drawn the relativity curve with a depression at medium terms unexpired, and seeks to justify it with evidence as to the state of mortgage lending, the tribunal considers that the line could equally have been drawn without the depression and that the graph is necessarily subjective - and unreliable - as a result.

37. The initial premise of the revised graph was that the majority of sales on the Estate were "mortgage-dependent" but the transactions Ms

Tolgyesi used included cash sales and there was no differentiation between them. Mr Card said that there was no difference between the different types of market sales and the tribunal tends to agree. There was also no evidence produced that unexpired leasehold terms of 68 years caused any problems of marketability, so far as mortgage-lending was concerned and, indeed, two of the three recent sales were made to purchasers with mortgages, for properties of very similar unexpired terms.

38. At the end of the day, given a choice between using relativity graphs of sometimes doubtful accuracy on the one hand, and a simple analysis of the most recent similar short lease sale transactions on the other, the tribunal prefers to rely upon the recent market evidence.

39. The two experts agreed on the same three most recent market transactions. The average relativity of the three, according to Mr Card's figures, was 91.9%. While this is comparable to the figure in the South East Leasehold graph published by the RICS, it makes no adjustments for the "no-Act world". Ms Tolgyesi said there should be a discount on the South East Leasehold graph relativities to reflect the "no-Act world" and, on cross-examination, Mr Card eventually agreed that such an adjustment should be made. Ms Tolgyesi had proposed a 5% deduction for this and, although Mr Card said that 5% was too high, the tribunal considers it to be appropriate (bearing in mind that in *Nailrile Ltd v Cadogan* a 7.5% deduction was made for the "no-Act world" in the particular circumstances of that case).

40. The only adjustment to the three comparables which was not agreed by the surveyors was the appropriate allowance to be made for the cost refurbishment of 471 Wickham Road. The tribunal does not consider that the £10,000 proposed by Ms Tolgyesi would be sufficient to remedy the poor condition of this property. The tribunal agrees with Mr Card that a purchaser would need to spend nearer to £20,000 to bring it up to condition, and that this would not constitute an improvement of that property.

41. Taking into account a 5% reduction for the "no-Act world" and the higher refurbishment costs, one achieves a relativity of about 87.5%, which the tribunal adopts, and this results in an existing leasehold value of £194,444 to go into the statutory valuation.

42. The premium payable for the new lease is therefore £17,305 and a copy of the valuation setting out the tribunal's calculations is attached.

Name: Judge Timothy Powell **Date:** 2 October 2014

Appendix: Valuation setting out the tribunal's calculations

CASE REFERENCE: LON/00AH/OLR/2014/0762

52 Cheston Avenue, Shirley, Croydon CR0 8DB

The Tribunal's Valuation

Assessment of Premium for New Lease

Leasehold Reform, Housing and Urban Development Act 1993 - Section 48

Components

Valuation date:	17th October 2013	
Yield for ground rent:	7%	
Deferment rate:	5%	
Long lease value	£220,000	
Freehold value	£222,222	
Existing leasehold value	£194,444	
Relativity	87.5 %	
Unexpired Term	68.43 years	
Ground rent currently receivable	£75	
Capitalised @ 7% for 14.43 years	6.9080	£668
Rising to:	£100	
Capitalised @ 7% for 15 years	9.1079	
Deferred 14.43 years @ 7%	0.3764	£343
Rising to:	£125	
Capitalised @ 7% for 15 years	9.1079	
Deferred 29.43 years @ 7%	0.1364	£155
Rising to:	£150	
Capitalised @ 7% for 15 years	9.1079	
Deferred 44.43 years @ 7%	0.0495	£68
Rising to:	£175	
Capitalised @ 7% for 8.99 years	6.51	
Deferred 69.44 years @ 7%	0.0179	£20
		£1,254
Reversion to:	£222,222	
Deferred 68.43 years @5%	0.0355	£7889
Less unimproved freehold value	£222,222	
Deferred 158.43 years @5%	0.0004	89
		£9,054

Marriage Value

Extended leasehold interest		£220,000	
Plus Freehold Reversion		<u>£89</u>	
		£220,089	
Landlord's existing value	£9,143		
Existing leasehold value	£194,444	<u>£203,587</u>	
Marriage Value		16,502	
Freeholders share @ 50%			**£8,251**
LEASE EXTENSION PREMIUM			**<u>£17,305</u>**