

IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993
SECTION 42

LON/00AH/OLR/2008/0033

Premises: 423 Wickham Road, Shirley, Croydon, Surrey CRO
8DG

Applicant: Stuart James Hunter (acting as Personal
Representative for the late Lorraine Alice Hunter)

Represented by: Mr. John R Card, FRICS

Respondent: The Honourable Robin Lawrence Dundas

Represented by: Mr. M Rodgers, QC
Richard D Kay BSc (Hons) MRICS

Ms. Natasha Rees, Fosters Solicitors

Tribunal: Ms LM Tagliavini, LL.M, DipLaw, BAHons
Mr. R Humphrys, FRICS

1. This is an application by the tenant of premises situate at the first floor flat, 423 Wickham Road, Shirley, Croydon, Surrey CR0 8DG ("the premises") pursuant to section 42 of the Leasehold Reform Housing and Urban Development Act 1993. The subject premises comprise a first floor maisonette in a two-storey 1930's semi-detached property on an estate known as the "Parkfields Estate" of just over 150 virtually identical maisonettes. The lease of the subject premises is dated 30 January 1939 for a term of 99 years beginning on 24 June 1938 – expiring on 23 June 2037. The ground rent payable under the terms of the lease is £6.50 per annum fixed for the term of the lease. By a notice dated 24/10/07 the Applicant sought the right to an extended lease which was admitted in a counter-notice dated 6/12/07.

- (i) The parties agreed the following: The date of valuation is 1st November 2007.
- (ii) The unexpired term is 29.64 years.
- (iii) The unimproved freehold vacant possession value is £200,000.
- (iv) The value of the extended 119.64 year lease is £198,000.
- (v) The deferment rate is 5%.
- (vi) The capitalisation rate is 10%.
- (vii) Costs agreed at £1,700 plus VAT.

2. The Tribunal was asked to determine:

- (i) Relativity.
- (ii)
- (iii) The value of the maisonette with its current short lease.
- (iv) Hope value.

The Applicant's Case

4. In giving evidence to the Tribunal, Mr. Card relied on his expert report dated 14th May 2008. He told the Tribunal that the subject property was in a basic unmodernised condition. He stated that there was difficulty in selling these properties due to the short leases left, as mortgages were impossible to obtain. He had had two similar cases recently where relativity was agreed at 60% for 30.73 years and 63.8% for 32 years. He stated that the subject property had been let on assured shorthold tenancy for £800 per month. He produced a rental valuation but did not rely on it because he thought it to be unnecessarily speculative. Mr. Card stated that he does not believe that an addition for "hope of marriage value" should be made to the value of the Respondent's reversion. Mr. Card also told the Tribunal that until recently lease extensions had been routinely granted for a premium of £25,000 and it was only recently that this had changed with a figure of £98,000 being quoted by the landlord's agent.

5. In his evidence, Mr. Card relied on a comparable at 1-4 Station Estate, Beckenham, Kent BR3 4DS, that involved the joint freehold purchase of a block of four similar maisonettes with 32 years unexpired. The premium was agreed at £145,000 on the 19th October 2006. Mr. Card relied on a second comparable at 59 Lavender Road, Carshalton, Surrey, SM5 3EF. This was said to be a first floor two-bedroom maisonette in basic condition with a garden. The lease was for 99 years from the 29th September 1938 with 30.73 years unexpired at a ground rent of £7.35 per annum. The premium was agreed at £52,711 on the 2nd January 2007. Placing reliance on these two comparables, Mr. Card gave his opinion that the relativity in the case of the subject property should be 60% producing a short lease value of £120,000.

6. Mr. Card also referred to two properties on the subject estate, which had sold recently, these being 455 Wickham Road and 178 Cheston

Avenue. The former was a first floor maisonette, which had 29.3 years unexpired and sold on 3rd March 2008 for £97,000. Mr. Card told the Tribunal that this property had been occupied by a lady in her 80s who wanted to sell the flat in order to move into ground floor accommodation as a matter of urgency. She had made an enquiry into a lease extension and was quoted a premium of £98,000. This was not followed up and when placed on the open market received only one offer from a property developer for £97,000. Mr. Card commented that in his opinion the open market transactions have been contaminated by the excessively high premiums quoted by the Freeholder's representatives. This property was subsequently sold at auction for £115,000 (which failed to complete leaving the seller with the non-refundable 10% deposit), and again in May 2008 for £110,000 (with completion still due at the time of the Tribunal hearing).

7. The second property at 178 Cheston Avenue was a ground floor purpose built maisonette, which sold at £145,000 and completed on 20th December 2007 through an executor's sale. The property was offered for sale on the open market with benefit of a Notice and a cash offer of £145,000 was accepted. The section 42 Notice was subsequently withdrawn after the offer of £38,000 for the lease extension premium had been rejected and a counter-offer of £97,100 having been made by the landlord, on the advice of Mr. Kay.
8. Mr. Card told the Tribunal in his evidence in chief, that in his opinion the sale of 178 Cheston Avenue was the more reliable comparable although in hindsight the price achieved was a little high. However, making a 10% allowance for a "No Act World" this sale produced a figure of £130,000. Mr. Card stated that his proposed value for the short lease of subject premises is £120,000 and therefore his proposed premium for the lease extension is £62,600. Mr. Card stated that marriage value is included within the calculation for the premium in this application for a 90-year lease and that no other marriage value (hope value) should be taken into account..

9. On cross-examination Mr. Card accepted that he had omitted to acknowledge in his report his obligations and duties towards the Tribunal then giving evidence as an expert having over 30 years experience in and around the Bromley area. He stated that he had them in mind when compiling his report. He asserted that he believed that the availability of mortgages is an important factor in determining relative figures. He agreed that this is a property which is unmortgageable due to the short lease and would interest cash buyers only. Mr. Card accepted that reference to the Becket & Kay Graph of Graphs was a legitimate tool for valuations which for 29.64 years unexpired showed a relative figure of between 50.5% and 68%, with the LVT determinations between 1994 to 2007 showing a relative of 62%. Reference to the rental market was also a legitimate approach although it was more variable and speculative than other methods of valuation which he preferred.
10. On further questioning by the Respondent, Mr. Card stated that he was not relying on the comparable at 178 Cheston Avenue and stated that he did not consider 455 Wickham Road to be a relevant sale because of the particular circumstances of the seller but relied on the two comparables at 59 Lavender Road and 1-4 Station Estate. He also stated that the 20% figure allowed for in his reference to the rental market was an "off the cuff figure" and invited the Tribunal to accept a figure of 35% as being more realistic, although he was not able to offer any market value evidence on yields produced by "buy to let" properties. Following cross-examination and in answer to a question from the Tribunal, Mr Card confirmed that he stood by all the evidence he produced which helped him to arrive at his valuation of £120,000.

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15. The third approach adopted "a rough assessment" of the benefit of the Act and deducting it from the real world price of the existing lease. Mr. Kay adopted Mr. Card's approach of a 5% deduction from
14. Analysis of actual transactions on the estate was the second approach. Mr. Kay acknowledged that the difficulty in this case was that there had been few such transactions in recent years, with earlier transactions being influenced by the £25,000 voluntary lease extension approach adopted previously by the landlord. Mr. Kay referred to the transactions at 178 Chesteron Avenue and 455 Wickham Road also referred to by Mr. Card. The first of these examples produced a derived relativity of 71.41% at 29.70 years and the second an assessed value of £78,357 (from the March 2008 sale) or £95,837 (from the May 2008 auction – assuming it completes), derived relativity being 38.73 or 47.37% respectively.
13. In support of the rental value approach Mr. Kay made a deduction of 35% for the landlord's outgoings over the rental figure giving a net rental figure. Mr. Kay then capitalised this figure at dual rates using a yield of 6%, a sinking fund of 2.25% and tax rate of 28p in the pound. This produced a suggested value for the 29.64 lease of the subject property let at £800 per month of £66,764, and a derived relativity of 33.38% (when compared to the freehold valuation price of £200,000).
12. Mr. Kay relied on his expert report dated 16th May 2008 and his oral evidence to the Tribunal. In this he adopted five approaches to the valuation, namely (1) the rental value approach; (2) the analysis of transactions using 25% marriage value deduction; (3) analysis of transactions using 5% deduction; (4) the Wentworth court decision and (5) the mortgage dependent graph. Mr Kay then averaged these methods and, out of 'abundance of caution', adopts 45%
- The Respondent's Case

the sale price producing relativities for No. 178 Cheston Avenue and 455 Wickham Road of 58.88% and 45.55%-51.65% respectively.

16. The Wentworth Court approach referred to a previous LVT decision; *ref: CAM/22uc/OLR/2005/0002*. Adopting the approach used in that case, Mr. Kay simply adjusted the relativity determined by the LVT of 47.4% at 32.1 years down to the unexpired term of 29.64 years by roughly following the curve of the graph that he would expect to see. This suggested a relativity of about 46% at 28.64 years and an existing lease value of £92,000.

17. Lastly, Mr. Kay referred the Tribunal to the mortgage-dependant graph which his firm had produced and which the Lands Tribunal had essentially adopted in the case of *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2006] LRA/72/2005 [2007] RVR 39. This approach suggested relativity in the instant case of 41% at 29.64 years and would produce an existing lease value of £82,000.

The Tribunal's Decision

18. In reaching its decision the Tribunal had regard to the extensive local experience and knowledge acquired by Mr. Card over some 30 years in the Bromley area. The Tribunal also had regard to Mr. Kay's experience, the majority if not all of which was based around the Central London market and noted his comment in his report that "I am usually asked to value upon the basis of observation and analysis of market transactions, rather than upon an instinctive basis". It appeared to the Tribunal that Mr. Kay had no actual market experience of properties in the subject area, as his work was centred on professional, non transactional work and he had no personal knowledge of the Bromley market and no knowledge of the No Act World, having entered the profession in 1992. The Tribunal regards Mr. Kay's relativity figure of 45% as an average of the five valuation methods he referred to, and in doing so diluted the result and made it unreliable.

19. The Tribunal accepts Mr. Kay's evidence that historically lease extensions had been routinely granted by the previous landlord for £25,000 with rising ground rents thereby creating a 'false market'. The change of direction towards substantially increased premiums for a lease extension was evidenced by the correspondence from Mr Kay to Bairstow Eves confirming the revised position of the landlord.

20. It is the Tribunal's view that the Beckett and Kay letter of 1st October 2007 to the selling agent and others, together with telephone conversations held, quoting a figure of £100,000 payable for premiums for lease extension created considerable uncertainty in the market and allowed a private treaty purchaser (described as a developer) at £97,000 to immediately sell on at auction to collect a lost deposit of £11,500 (at an auction price of £115,000) and at a second auction for £110,000 thereby realising a quick profit in a difficult market between March to May 2007 where many professional observers reported prices falling.

21. The Tribunal does not accept Mr. Kay's rental approach which is unsupported by analysis of actual transactions and gains no assistance from it whatsoever. Mr. Kay purported to take the actual rent of £800 per month for the subject property and deducted 35% (based on a LVT decision) and then used the dual rate tables with tax to produce a figure of £66,764 for the 29-year lease. The Tribunal have no confidence in this hypothetical textbook valuation where only one factor, the rent, is known by Mr. Kay. If this approach was correct, the Tribunal queries how the sale of similar properties achieve between £97,000 and £115,000 (or even £145,000) in a difficult market. Mr. Kay produced various alternatives at various rates, with and without tax, but the Tribunal regard the figure of £66,764 as clearly not right and the Tribunal is not assisted by it.

22. Mr. Kay's analysis of transactions using 25% marriage value showed a relativity of 71.41% on the 178 Cheston Avenue property and 38.73% on the sale of 455 Wickham Road or 47.37% if the May auction completes.
23. Analysis of transactions using a 5% deduction from the sale price showed a range of 68.88% to 45.55%. The Tribunal notes that the valuers have agreed adjustments for time and in this analysis are surprised that capital values have increased as suggested here by Mr. Kay who acknowledges he is not in the market. The Tribunal is familiar with and accepting of valuers' various methods of adjusting for the No Act World. The more the valuer knows about the parties and the transactions the better s/he is able to make such adjustments but equally the more remote the valuer the more difficult it is to make such adjustments. The Tribunal accepts that the reason for making the adjustment is that in an Act World a purchaser of a short lease may pay a share of the marriage value to the vendor especially where a Section 42 Notice has been served and accepted. In this case, the Tribunal finds that both valuers are somewhat remote from the transactions and find that to some extent the interpretations offered of the evidence provided appear to confirm their preconceptions.
24. In the Tribunal's opinion, the evidence in respect of 178 Cheston Avenue shows, even in the absence of confirmatory documents, that when the landlord would not accept the purchaser's offer, the purchaser withdrew their notice. This suggests to the Tribunal that the purchaser attached little or no weight to the Act. There appears to have been no negotiation at all. There is no evidence before the Tribunal of the purchaser's advice or motives. In the example of 455 Wickham Road, the Tribunal finds that it is probable that the uncertainty created by the landlord quoting vastly increased premiums created uncertainty in the market leading to a sale at under value which the purchaser was able to turn into a profit (twice) at auction. There is no notice served in respect of this property and it is the Tribunal's view that there is no justification to conclude that the first sale includes anything for the Act and possibly none on the later two sales at auction.

25. The Tribunal find Mr. Kay's approach to the Wentworth decision entirely unsatisfactory where Mr. Kay used the relativity from the LVT decision, which his partner Mr. Beckett appeared in, to arrive at a figure of 46% for relativity; CAM/22UC/OLR/2005/0002. In the Wentworth case the Tribunal stated that *"We were not presented with any open market transactions of short term leases....This over analysis could become a mathematical exercise in its own right and become far too remote from what was actually happening in the market.....Yet again we must stress that reliance on actual information from the local market is more useful than extrapolation of information."* In the subject case the Tribunal shares these views expressed in the Wentworth case and attaches no weight to Mr. Kay's adoption of that approach in this case.
26. The Tribunal was not persuaded by Mr. Kay's evidence and reliance on the mortgage dependent graph approach produced by Mr. Kay and Mr. Beckett for properties outside central London, which in Mr. Kay's opinion shows a 41% relativity for the subject property. While recognising the time and effort that the partners have put into producing this graph, the Tribunal is mindful that Mr. Card, who has considerable knowledge of the local area including pre Act experience and that many other surveyors do not support this theoretical approach based only on opinion. Sales evidence as discussed above suggests that this approach is not properly reflective of the actual market. The Tribunal accepts the evidence of a note of a conversation with Jean Hanson at Bairstow Eves where she says that there was a market for the properties on this estate among the retired and elderly who are not interested in lease extensions and who want to avoid inheritance tax. They are cash buyers and there is a good market for this type of property as borne out by the evidence of cash sales. The Tribunal accepts that there are many cash buyers today and in 2007 in many price ranges and the Tribunal attaches no weight to this graph.

27. In conclusion, it is the Tribunal's opinion that the May sale of 455 Wickham Road is the best evidence of the value of a short lease i.e. £110,000. The fact that it was sold at auction in a difficult market with the threat of a £100,000 premium hanging over a prospective lease extension makes the Tribunal's decision conservative. Accordingly, no adjustment for date is made. Mr. Card accepted that his adjustment of 5% for rights in instances where no Notice had been served may be too high and the Tribunal is doubtful that there should be any adjustment. However, following both the valuers' approach in this matter the Tribunal makes an adjustment of 2.5% giving a short lease value of £107,250 and a relativity of 53.625%. Therefore, the premium payable is £68,956 as set out in the attached valuation.

Chairman:.....

M. T. G. H. A. D. I. N. I. C. E.

Dated:.....

31/7/08

Appendix I

**Valuation Tribunal's Valuation
in accordance with
the Leasehold Reform Housing and Urban Development Act 1993 as amended**

Address:	423 Wickham Road, Croydon
Valuation Date:	1 November 2007
Lease:	99 years from 24 June 1938 expires 23 June 2037
Unexpired term:	29.64 years
Ground Rent:	£6.50 P.A.
Capitalisation Rate:	10.00%
Deferment Rate:	5.00%
Freehold:	£200,000
Extended Lease:	£198,000
Short Lease:	£107,250
Relativity:	53.625%

Diminution in the value of the Landlord's interest

Term	6.50		
YP 29.64 years	<u>9.4069</u>	61	
Reversion	200,000		
PV 29.64 years	<u>0.2355</u>	<u>47,100</u>	
Less Landlord's future interest		47,161	
Reversion	200,000		
PV 119.64 years	<u>0.0029</u>	<u>580</u>	
Diminution in the value of the Landlord's interest			46,581

Landlord's share of Marriage Value

Value of extended lease	198,000		
Value of Landlord's proposed interest	<u>580</u>	198,580	
Less			
Value of short lease	107,250		
Diminution of Landlord's interest	<u>46,581</u>	<u>153,831</u>	
Marriage Value		44,749	
Landlord's share @ 50%			<u>22,375</u>

Premium payable **£68,956**

