The Quest for the Holy Grail Part II

In the words of Bob Geldof and Boomtown Rats and no doubt a few poor leaseholders in their million-pound flats up and down the Kings Road:

"I don't like Mundy" or something like that.

However, there may still be a glimmer of light at the end of the tunnel, as suggested by Lord Justice Lewinson's plea that hopefully

"The Holy Grail will one day be found",

in the recent Court of Appeal case of **Mundy v Sloane Stanley (2018).**

It is now even clearer than before, that when considering a method to find the relativity, the courts will consider that market transactions are at the top of the hierarchy of evidence, followed by graphs. This poses a major challenge for valuers as short lease sales evidence is sparse and maybe tainted.

Why is evidence so hard to come by?

Changes to the Act, subsequently, have dramatically increased the number of tenants who qualify for a lease extension, which could not have been envisaged by the original draughtsmen. Originally the Leasehold Reform, Housing and Urban Development Act 1993 required tenants to have occupied the flat as his principle home for the last three years or for periods of three years in the last ten years.

In addition to lessees who didn't pass the residency test, the Act therefore excluded investors and companies that owned flats. Until this qualification regime was eased, there were many more short lease sales and "the market" flourished with evidence.

However, following further reform giving leaseholders more rights, nearly all leaseholders who have been the registered owner of their flats for 2 years or more, qualify for a lease extension (*I suspect that even this 2 year restriction, which bizarrely doesn't apply in Collective Enfranchisement, will be lifted soon as it is fairly easy to circumvent anyway, by the vendor serving the S42 notice and assigning this notice to the purchaser*).

As most owners of short leases have the right to extend – surprise, surprise - they tend to do so, prior to or even during the sale process.

Therefore, there are now significantly fewer short lease sales.

Are there any Purchasers Out There?

Purchasers like certainty when they buy a property. If they decide to buy a flat with a short lease, they should maybe consider a course of counselling with Gamblers Anonymous, as there are so many risks!

If, however, they are professionally advised they should be looking for a significant discount to reflect the full potential costs of extending the lease, including the premium payable to the landlord, all the professional fees incurred by them and their landlord (S60 Costs). They should also make a further allowance to cover possible tribunal costs and the odd aggressive landlord who will use "the Delaforce Effect" to push up the premium.

Historically many purchasers of short lease flats outside Prime Central London didn't get this advice, which goes some way to explaining why the market pays relatively more for short lease outside PCL.

Does Google help?

Nowadays, vendors and purchasers can do a little bit of research on the internet before they consider a sale or purchase.

In the last couple of years, a quick Google search of "lease extension calculator" will reveal several free calculators online, such as the trusted brands of Money Saving Expert and the Leasehold Advisory Service.

Paradoxically, all these relatively new calculators use graphs rather than market evidence. This perhaps leads to an inbuilt circularity in the market towards a reliance on the graphs.

Can a deal be done?

Armed with this information the purchaser and vendor may try to negotiate a deal. However, there are few purchasers willing to take the risk and there are few vendors willing to drop the price enough to satisfy most risk-averse purchasers.

Estate Agents to the Rescue?

What happens next is interesting and is a phenomenon I have witnessed on many occasions in the last couple of years. “Switched-on” Estate Agents were advising vendors of short leasehold flats, who may not have the cash to fund a lease extension, to market the property on the basis they already had a lease extension. It takes several months to find a buyer, to do the necessary searches, exchange and complete. In the meantime, the vendor will agree either an informal lease extension or a statutory lease renewal with the landlord, to be completed simultaneously with the sale and transfer. In this way the vendor has no need to find the money for the extension and the purchaser has no risk associated with buying a short lease.

Is there still a real Market Place for Short Leases in 2018?

The definition of "market value" as defined by the International Valuation Standards Council ("IVSC") and the Royal Institution of Chartered Surveyors ("RICS") is “the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”

- Why would anyone sell a short lease, when they could sell a long lease without having to find the costs before embarking on the process?
- If leaseholders were advised properly would they sell short leases?
- If evidence is found, care should be taken to ensure it is an arm’s length transaction.
- Why was the flat sold? Could it have been a forced sale? Were both sides professionally advised?
- With such few sales, can there really be a true “Market”?

Is it time for a Statutory Graph?

I would be interested to hear any other views on this problem.

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