



**FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AW/OLR/2019/0659**

**Property** : **Flat D, 9 Holland Road, London  
W14 8HJ**

**Applicant** : **(1) Mr M Kullmann  
(2) Mrs G Kullmann**

**Representative** : **Ms England of counsel**

**Respondent** : **Ms C Norris**

**Representative** : **Mr Modha of counsel**

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

**Tribunal members** : **Judge Simon Brilliant  
Mr D Jagger MRICS**

**Date of determination  
and venue** : **at 10 Alfred Place, London WC1E  
7LR**

**Date of decision** : **08 October 2019**

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**DECISION**

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## **Summary of the tribunal's decision**

- (1) The appropriate premium payable for the new lease is £59,765.

## **Background**

1. This is an application made by the applicant lessees 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 a new lease of Flat D, 9 Holland Road, London W14 8HJ (the “property”).
2. By a notice of a claim dated 02 October 2018, served pursuant to section 42 of the Act, the applicant exercised the right for the acquisition of a new lease of the property and proposed to pay a premium of £41,000.00 for the new lease.
3. On 28 November 2018, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £60,000.00 for the new lease.
4. On 30 May 2019, the applicant applied to the tribunal for a determination of the premium and terms of acquisition.

## **The issues**

### **Matters agreed**

5. The following matters were agreed:
  - (a) The property is a converted flat on the top two floors of a 1900's four storey mid terraced building of four units. The property consists of a sitting room, kitchen, two bedrooms, bathroom/WC and private roof terrace.
  - (b) The valuation date is 2 October 2018.
  - (c) Details of the tenants' leasehold interests:
  - (d) Date of lease: 06 February 1989.
  - (e) Term of lease: 99 years from 25 March 1998 to 24 March 2087.
  - (f) Unexpired term at valuation dates: 68.4 years.
  - (g) Ground rent: £200.00 pa for the first 33 years, £400.00 for the next 33 years and £600.00 for the final 33 years.

- (h) Capitalisation rate: 6% pa.
- (i) Deferment rate: 5% pa.
- (j) Marriage value: 50%.
- (k) Unimproved freehold vacant possession value: £600,000.00.
- (l) Extended lease value of the property: £594,000.00.

**Matters not agreed**

6. The following matters were not agreed:
- (a) Relativity.
  - (b) The premium payable.

**The hearing**

7. The hearing in this matter took place on 8 October 2019. The applicants were represented by Ms England of counsel, and the respondent by Mr Modha of counsel.

8. 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.

9. The applicants relied upon the expert report and valuation of Mr Wilson Dunsin FRICS dated 01 October 2019 and the respondent relied upon the expert report and valuation of Mr Andrew Lester MRICS also dated 01 October 2019.

**The expert evidence**

10. In summary, both experts relied upon graphs rather than comparables.

*The applicants' evidence*

11. Mr Lester relied only on three recent graphs:

2015	Savills Enfranchiseable (with a 3.5% deduction for Act	83.39% <sup>1</sup>
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<sup>1</sup> Mr Lester incorrectly calculated this as 83.85% in paragraph 7.4 of his report.

	rights).	
2016	Savills Unenfranchiseable.	83.59%
2016	Gerald Eve Unenfranchiseable.	83.98%

12. The average of these three figures is 83.65%.

*The respondent's evidence*

13. Mr Dunsin relied on seven graphs, five earlier ones together with Savills Enfranchiseable 2015 and Gerald Eve Unenfranchiseable 2016.

14. The earlier graphs comprised 2009 RICS Greater London and England figures and were as follows:

Beckett & Kay.	91.75%
South East Leasehold.	92.39%
Nesbitt & Co.	90.09%
Austin Gray.	92.19%
Andrew Pridell.	91.44%

15. The average of all seven figures taken by Mr Dunsin is 89.34%.

**Discussion**

16. Both experts had carried out their valuations and gave their evidence in good faith, and in accordance with the duties imposed on those giving expert valuation evidence to the tribunal.

17. We must apply the guidance given to tribunals in recent cases regarding relativity.

18. Mundy v Trustees of the Sloane Estate [2016] UKUT 233 (LC) provides authoritative guidance that where there are no reliable market transactions, the correct approach is to use graphs of relativity.

20. In Reiss v Ironhawk Ltd [2018] UKUT 0311 (LC) the Upper Tribunal found that the most reliable method of valuation in respect of a property in Tottenham (outside prime central London) were Savills' enfranchiseable graphs.

21. In Trustees of Barry and Peggy High Foundation v Zucconi [2019] UKUT 242 (LC), Mr Trott said:

24. The RICS graphs were published in 2009 since when several of them have been updated, including the Gerald Eve and Savills graphs. The fact that a graph is based on data from prime central London does not automatically invalidate its use outside that area; see, for instance, the use of the prime central London Cluttons Graph in *Xue*, where the appeal property was in Shepherd's Bush; or in *Sinclair Gardens*, where the Tribunal referred to Savills 2015 Graph (see paragraph 62).

25. In *Re Midland Freeholds Limited's and Speedwell Estates Limited's Appeals* [2017] UKUT 0463 (LC), which concerned maisonettes in Northfield and Sutton Coldfield, the Tribunal considered the problem of using the Savills 2015 (enfranchiseable) and 2016 (unenfranchiseable) graphs for properties outside prime central London and determined by reference to the evidence (paragraphs 42 to 46) that they could be appropriately used in those appeals.

26. The appellant referred to *Reiss* in their application to the FTT for permission to appeal. *Reiss* involved a maisonette near White Hart Lane, London, N17. It was outside prime central London. The Tribunal determined that the most reliable method of valuation was to use Savills 2015 enfranchiseable graph.

27. In my opinion the FTT did not pay proper regard to the more recent cases, outside of prime central London, where the Savills enfranchiseable and unenfranchiseable graphs have been preferred by the Tribunal to the use of an average of the RICS 2009 Graphs. In *Mundy* the Tribunal identified two valuation methods where there was no reliable market transaction concerning the existing lease value with rights: either use the most reliable unenfranchiseable graph or use an enfranchiseable graph and make a deduction for the benefit of the Act. Had the FTT considered the most reliable (and recent) graphs they would have taken into account the Savills 2015 enfranchiseable graph, the Savills 2016 unenfranchiseable graph and the Gerald Eve 2016 (unenfranchiseable) table and graph. They should have been aware of the Tribunal's previous decisions adopting the Savills graphs outside of prime central London.

22. Of the different approaches taken by the experts in this case, we prefer that of Mr Lester to that of Mr Dunsin as we fell this is more in line with the approach being taken in the most recent Upper Tribunal authorities.

## **The premium**

23. The tribunal determines the appropriate premium to be **£59,765**.

24. A copy of its valuation calculation is annexed to this decision.

**Name:** Judge Brilliant

**Date:** 09 October 2019.

## **Appendix:** Valuation setting out the tribunal's calculations

Freeholders share @ 50% **£32,335**

**LEASE EXTENSION PREMIUM £59,765**

### **Components**

Valuation date:	02/10/2018	
Deferment rate:	5%	
Capitalisation rate:	6%	
Freehold value:	£600,000	
Long lease	£594,000	
Existing leasehold value	£501,900	
Relativity	83.65%	
Unexpired Term	68.45 years	
Ground rent currently receivable	£200	
Capitalised @ 6.0% for 2.48 years	2.24	£449
Rising to:	£400	
Capitalised @ 6.0% for 33 years	14.23	
Deferred 2.48 years @ 6.0%	0.865	£4,926
Rising to:	£600	
Capitalised @ 6.0% for 33 years	14.23	
Deferred 35.48 years @ 6.0%	0.1265	£1,080
Reversion to freehold value	£600,000	
Deferred 68.48 years @ 5%	0.035396	£21,238 £27,693
Reversion to FHVP	£600,000	
PV £1 158.8 years @5%	0.0004385	£263 <b>£27,430</b>

## **Marriage Value**

<u>Value of Proposed Interests</u>		
Value of extended lease	£594,000	£594,263
Value of freeholders interest	£263	
 <u>Value of Existing Interests</u>		
Landlord's existing value	£27,693	
Existing leasehold value	£501,900	£529,593
		£64,670
 Freeholders share of 50%		 <b>£32,335</b>
 <b>LEASE EXTENSION PREMIUM</b>		 <b>£59,765</b>

## **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).

**CASE REFERENCE LON/00AC/OLR/2014/0106**

**First-tier Tribunal**

**Property Chamber (Residential Property)**

**Valuation under Schedule 6 of the Leasehold Reform Housing and  
Urban Development Act 1993**

**Premium payable for the freehold interest in [Property]**

**Valuation date: [Date]**