



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

**Case reference** : **LON/00BH/OLR/2019/1344**

**Property** : **Flats 1,2,3,4,5,10 & 17 Claypole Court, 3 Yunus Khan Close, London, E17 8XF**

**HMCTS code (paper, video, audio)** : **V: VIDEO FVH**

**Representative** : **Mr Daniel Reese of Abbeymove Limited and Mr Aki Achillea**

**Respondent** : **Tulsesence Limited**

**Representative** : **Mr Tim Sheridan of Sheridan's Estate Agents Limited and Ms Amy Sevier**

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

**Tribunal members** : **Judge N Hawkes  
Mr I Holdsworth FRICS**

**Date of determination and venue** : **9 September 2020 10 Alfred Place, London WC1E 7LR (remote hearing)**

**Date of decision** : **11 September 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FULL VIDEO HEARING REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 295 pages, the contents of which we have noted. The order made is described below.

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

- (1) The premium payable for the new lease of Flat 1 is **£24,535**.
- (2) The premium payable for the new lease of Flat 17 is **£20,114**.

## **Background**

1. These are applications made by the Applicant leaseholders pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the premium to be paid for the grant of new leases of Flat 1 and Flat 17 Claypole Court, 3 Yunus Khan Close, London, E17 8XF.
2. The Tribunal was informed that similar applications have been made in respect of Flats 2, 3, 4, 5 and 10 Claypole Court. Copies of these applications were not contained in the hearing bundle but the parties have agreed that the Tribunal's determination in respect of Flat 1 will apply to Flats 2, 3, 4, 5 and 10. Accordingly, it was not necessary for the Tribunal to have sight of the other applications. Flats 1, 2, 3, 4, 5 and 10 Claypole Court are one bedroom flats and Flat 17 is a studio flat. In all cases, the valuation date is 9 April 2019.

## **The issues**

3. The only matters remaining in dispute are the capitalisation rate for ground rent, Leasehold relativity, and therefore the premiums payable.

## **The hearing**

4. The hearing in this matter took place by video on 9 September 2020. The Applicants were represented by Mr Daniel Reese of Abbeymove Limited and by Mr Aki Achillea. The Respondent was represented by Mr Tim Sheridan MRICS of Sheridan's Estate Agents Limited and by Ms Amy Sevier.
5. It was not practicable to carry out an inspection of Claypole Court and the Tribunal did not consider it necessary to carry out a physical inspection in order to make its determinations.
6. By Directions dated 12 June 2020, the Tribunal directed the parties' valuers to exchange expert reports. The Applicants exchanged a report

prepared by Mr Reese dated 12 August 2020 with the Respondent but they sought permission to rely upon a report of Mr Reese dated 19 August 2020 at the hearing. In his report dated 19 August 2020, Mr Reese expanded upon the evidence given in his earlier report.

7. Although the report of 19 August 2020 had been prepared by Mr Reese after he had had sight of Mr Sheridan's expert report, the Respondent did not oppose the Applicants' application and Mr Reese's report of 19 August 2020 was admitted in evidence. The Respondent relied an expert report prepared by Mr Sheridan dated 30 July 2020.
8. After Mr Reese had finished giving his oral evidence and after he had spoken to a colleague and had told Mr Achillea that there was a relevant transaction which he wished to rely upon, Mr Achillea applied to re-call Mr Reese to give oral evidence concerning this transaction. The transaction had formed no part of Mr Reese's oral evidence and had not been referred to in the report dated 12 August 2020 or in the report dated 19 August 2020.
9. The Tribunal was informed that Mr Reese's proposed new evidence concerned the sale of a property on the same estate as Claypole Court which had taken place in December 2016. The Tribunal was also informed that the Respondent had not been provided with any evidence concerning the lease length, the terms of the sale or the condition of this property.
10. The Tribunal determined that it would not permit Mr Achillea to re-call Mr Reese to give evidence concerning this transaction. The Tribunal accepted arguments put forward by Ms Sevier that it would not have been procedurally fair to do so and, in any event, the Tribunal was not satisfied that the proposed further evidence would be of assistance to the Tribunal in determining the Applicants' applications.
11. The Tribunal considered that a 2016 sale, which would require indexing over a long period of time, would be too far removed from the 2019 valuation date in the present case to constitute reliable and/or persuasive evidence. Further, the Tribunal noted the limitations of relying upon a single transaction.

### **Relativity**

12. The Applicants contend for a relativity of 90.79% and the Respondents contend for a relativity of 86.4%.
13. During the course of the hearing, the Tribunal considered in detail the recent decision of the Upper Tribunal in *Deritend Investments (Birkdale) Ltd v Treskonova* [2020] UKUT 0164 (LC). At [58] the Upper Tribunal stated:

*“The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PCL graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all. In any event, no such persuasive evidence was presented to the FTT.”*

14. The Tribunal prefers the expert evidence of Mr Sheridan to the expert evidence of Mr Reese on the issue of relativity. Mr Reese sought to rely upon the RICS 2009 graphs and the reasoning put forward in his reports and in his oral evidence did not accord with the guidance given by the Upper Tribunal in *Deritend*.
15. Mr Sheridan took account of the *Deritend* decision and arrived at a relativity of 86.4%, which is slightly higher than the relativity derived from solely applying the two 2016 PCL graphs. Mr Sheridan had therefore been persuaded to adjust the figure suggested by the PCL graphs. He was consistent in his evidence and did not seek to depart from the proposed relativity of 86.4%. Whilst the Tribunal was not provided with detail of the evidence giving rise to the adjustment, we are satisfied that the adjustment has been accepted by the Respondent’s expert.

### **The capitalisation rate**

16. The Applicants contend for a capitalisation rate of 7% and the Respondents for a capitalisation rate of 6%.
17. Mr Reese’s understanding of the ground rent market differed from that of Mr Sheridan and we prefer the evidence of Mr Sheridan on this issue.
18. Mr Sheridan gave evidence that a capitalisation rate of 6% reflects current market conditions. In his opinion, capitalisation yields have strengthened in recent years with an influx of pension funds and investment vehicles entering the ground rent market and a hypothetical purchaser would take into account the ground rent increase which was due to come into effect in July 2020. He also took into account the nature and location of Claypole Court. The Tribunal accepts Mr Sheridan’s evidence.

## **Conclusions**

19. For the reasons set out above, the Tribunal accepts Mr Sheridan's valuations without adjustment.

**Name:** Judge N Hawkes

**Date:** 11 September 2020

## **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).