



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

Case Reference	:	CAM/22UH/OLR/2022/0057
Property	:	67 Trotwood Chigwell Essex IG7 5JP
Applicant	:	Barbara Mary Walsh (leaseholder)
Representative	:	Homehold Services Ltd.
Respondent	:	Sinclair Gardens Investments (Kensington) Ltd. (landlord)
Representative	:	PDC Conveyancing
Type of Application	:	Determination of terms and premium of a lease extension
Tribunal Members	:	Mr N Martindale BSc MSc FRICS
Date of Decision	:	20 October 2022

DECISION

Decision

1. The premium to be paid by the applicant for the lease extension for the Property is **£33,034. (Thirty three thousand and thirty four pounds).**
2. All other terms are agreed between the parties and are therefore outwith the jurisdiction of the Tribunal.

Introduction

3. This is an application made under S.48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of an acquisition of an extension to the leasehold interest in the Property. A S.42 Notice was served 8 October 2021 and is the valuation date.
4. Valuers for the parties are; Robert Marchant BSc MRICS for the applicant leaseholder; Ellie Howlett MSc for the respondent landlord. The parties have agreed many of the often contentious facts about the Property, and about the key terms of the valuation but, have not agreed: The value of the existing lease; the value of Act rights, relativity and the final premium.
5. The Tribunal received the main reports from each valuer. A very large single bundle with a copy of each report together with full details of recorded sales transactions, graphs and full case reports was filed.

Property

6. The Property is a purpose built, from the early 1980’s, ground floor flat with two bedrooms (a double and single), bathroom, kitchen and living room. The agreed gross internal floor area is 49.36m². It is a small two bedroom flat. Any additional value of the Property attributable to any works of tenant improvements is to be ignored but, in any case none were identified by either party. Any reduction in value of the Property attributable to any disrepair by the tenant is also to be ignored. However tenants improvements or disrepair was specifically identified by either party. The Property remains in a very similar form to when it was constructed in the 1980’s.
7. Windows are upvc double glazed, space and water heating is apparently gas fired, with mains water and drainage. The floor plan supplied is typical of all the other small two bedroom flats in the block and likely the whole development.
8. Parking of vehicles is communal and no spaces are reserved to any particular flat. Although there are blocks of garages, some assigned to particular flats and held on the same lease, this Property does not have a garage. Garages are used for parking one car or as domestic storage. Garages are located in communal terraces elsewhere on the whole estate. There are no other exclusive outside stores, garages or other spaces reserved to the lease of the Property.
9. The Property is part of a three storey Block of 9 flats in all. Access is by a communal hallway staircase and landings. There is no lift. The Block is one of several which together form the small residential estate. The

other original residential blocks in the Development are very similar to those in this Block. None of these blocks have a lift.

10. The Development site like many similar estates of this age, appears to the Tribunal to be on land formerly incorporated within the underground railway sidings and other railway land near to Hainault Tube Station. Although convenient for travel into London, as with such developments there remains residual activity and noise associated with the continuing railway use but it is believed at similar levels across the estate.

Lease

11. The freehold to the Property has been owned since 1996 by the current landlord. It includes several adjacent blocks on the estate, flats numbered 61 to 93, under title EX355125. Other parts of the estate remain in different freehold ownership.
12. The Property lease is dated 26 September 1983 runs for 99 years (less 10 days) from 25 December 1981 at a currently passing of £120 pa rising to £180 for the last 33 years. It's registered under EX287159. The unexpired term is 59.21 years at the antecedent valuation date. There is no intermediary lease. The register shows that the applicant paid £180,000 on 24 November 2014 on purchase of this lease when there was about 66 years unexpired. There is no ancillary land.

Agreed Facts

13. A statement of facts was signed off between the parties' valuers in July 2022. These include: The AVD of 8 October 2021. Capitalisation rate 7% and by implication the capital value of the remaining term. Capital value of Property with extended lease £237,500. Capital value of Property as a virtual Freehold £239,899. Deferment rate 5%.
14. There are four transactions, sales of short leases of flats in the Development. The valuer for the applicant refers to 4 of them, valuer for the respondent only refers to 3 of them in her schedule though refers to all 4 in her report. The interpretation of these sales and their application or otherwise to the Property when attempting to find its short lease value or indeed their use at all, remains disputed.
15. All four flats are almost identical in layout, size, age, accommodation, construction, unexpired lease terms and ground rents. 126 Trotwood: (FF) short leasehold sold £171,800, May 2021. 52 Trotwood: (FF) short leasehold sold £175,000 February 2021. 16 Trotwood: (GF) short leasehold sold £184,500 January 2020. 32 Trotwood: (FF) short leasehold ? (disputed) sold £202,000 July 2020. The dates are of the completion of sale and not when they went under offer.

Applicants Case

16. The applicant's Valuer filed a report dated 1 September 2022 which contained the declaration and statement of truth and compliance.
17. The principal task was the valuation of the existing short lease at the Property. The report re-iterates case law around the use of actual sales of leases against the use of the RICS and the more recent and established use of the graphs Savills and Gerald Eve (No Rights Act) and specifically their average. The Upper Tribunal has preferred actual sales transactions to the use of graphs but, only if they require minimal adjustment or none at all.
18. In this application the applicant's valuer considers that all transactions require too much manipulation before they can be used. Although he does carry out an exercise in considering and adjusting them to find a relativity, in the end he rejects their use entirely. Instead he uses the average of the relativities from the graphs to find relativity.
19. The value of the existing lease is to be taken as the price that a buyer would pay for a short lease if the right to extend that lease did not exist in law. One would expect this figure to be lower than where, in reality, the short lease could be extended as of right by the leaseholder. As transactions of leases of flats all occur in the 'Act' world (Leasehold Reform Housing and Urban Development Act 1993), such lease sales would be inflated to some degree. Such inflated figures would need to be adjusted to arrive the 'No Act' values needed for this lease extension.
20. The report referred to case law of *Mallory & Others v Orchidbase Ltd* [2016] UKUT 0468 (LC). Here the Upper Tribunal among other matters preferred use of actual transactions over graphs, provided that the former only required limited adjustment. In *Deritend v Treskonova* [2020] UKUT 0164 (LC) where in the absence of actual transactions, the use of the more recent graphs from Savills and Gerald Eve averaged were adopted in preference to the previously more established graphs from the RICS review. In the *Mallory* case the sales of short leaseholds, were of flats in the same block within 3 months of the AVD. These sales were used by the UT in that case.
21. The valuer takes the view that, taken together, the 4 transactions set out and interpreted and applied in the exercise he has carried out in his report, do not form the basis for deriving a reliable relativity between long leasehold and short leaseholds for this particular Property. The use of graphs is therefore required. Martin Rodger's statement in his *Deritend* decision refers: *"The two PCL graphs...should be considered as a starting point where no, or insufficient transactional evidence has been submitted by the parties."* He continues *"The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence...."* . He also cites the

Upper Tribunal in the Orchidbase decision, “*We endorse and re-iterate the Tribunal’s preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation. In this case we are satisfied that there is sufficient market evidence to render unnecessary any reference to graphs of relativity.*”

22. The valuer here however concludes from his exercise of devaluing the sales is that they do require “*artificially extensive manipulation*” and that there were “*too many adjustments required*” as found in other UT cases, for them to be useful. While the transactions in the Mallory case were adopted, they were very similar and produced final relativities which fell within the Savills and GE pattern.
23. The valuer for the applicant’s nevertheless undertakes the exercise. He revises the sale prices by referencing the UK HMLR derived HPI. It is 124.06 at the AVD and lower for each of the 4 sales at earlier completion dates. He also proposes to add 2.5% to the value of the ground floor on the basis of accessibility for wheelchair or pushchair users. He does not however ascribe any additional value for the better security on upper floors or generally from less nuisance for having neighbours passing or located above and generating impact noise.
24. From this exercise he derives relativities of 75.50% to 81.94% for the three principal sales and 87.94% for the contested transaction of No.32 Trotwood. Finally he deducts the 6.29% overage for “Act Rights” taken from the allowance made by Savills to get to their “Non Act Rights” graph.
25. The table contained in his report contains a small arithmetic error but, on revision at the hearing this produced final relativities of 69.21, 70.28 and 75.37. Of these 3 an average of 71.62 % relativity is derived. When the fourth sale (an apparent outlier) at No.32 Trotwood is added in this it rises to 74.13%. The valuer having completed this exercise however sets it aside as noted above. He prefers the relativity from the graphs which produce 77.71%.
26. From the case of Zucconi the valuer references the UT approval of the Savills and Gerald Eve No Acts Rights outside of PCL. He also references the conclusion and from case of Deritend that the average of the two may be used to derive relativity. The valuer declines to use the sales evidence because he concludes it requires excessive adjustments, produces no clear pattern of relativities, were of differing conditions, and were in some cases estate sales at auction.
27. For example he is concerned that flats No.126 and No.52 these were unmodernized flats, and whilst in repair, were not attractive to buyers especially those from the buy to let market who mostly want a quick

letting of a modernised flats. They would expect a discount to modernize prior to letting even if some owner occupiers might prefer to put their stamp on the Property. He found some flats were on a higher and inferior floor; that they had been sold by auction with a buyers premium; that they required significant time adjustment being agreed STC prior to the AVD (not reflected in the HPI). Lastly they needed an artificial No Act Rights adjustment.

28. He was also unclear whether the sale price for No.32 at £202,000 included the price of a lease extension. He had concluded that the buyer there (although arranging for a lease extension via the seller at the time) paid for a negotiated lease extension, 'sub-optimal' to the statutory arrangement and containing a significant ground rent. It was reported that a premium of some £30,000 had been paid to the freeholder for this arrangement on top of the £202,000 headline, (£205,833 time adjusted) short lease sale price. From this sale he felt the combined £202,000 plus the alleged £30,000 premium in combination generally fitted in with the virtual freehold value of the Property at the AVD, agreed between the parties.
29. Having disregarded all use of actual short lease sales, on applying the relativity (short to long lease) from the graphs average at 77.71%, produces he found a short leasehold value of £186,426 for the Property. Taken with the items already agreed between the parties his valuation concludes that the premium would be £33,034 to extend the term of this short lease on the statutory basis ignoring any rights under the Act to do so.

Respondent's Case

30. The respondent's valuer filed a report dated 1 September 2022 which contained the declaration and statement of truth and compliance.
31. The respondents valuer sets out the same statement of agreed facts as the applicants valuer's report. The report contains a similar description of the accommodation at the Property and of the surrounding blocks.
32. The valuers report re-iterates in brief much of the same facts and findings from earlier case law from the UT as mentioned by the applicant's valuer. In essence the report finds that the Upper Tribunal cases have supported the principal that real world evidence of sales of comparable properties. Short lease transactions should be used where they are available and that an appropriate deduction should be made from the sale prices to reflect the benefit of the rights to extend the lease were granted under the 1993 Act.
33. The report focuses on the 3 sales but, not on No.32 Trotwood. However she does note that the selling agent appeared to confirm that the sale

price of £202,000 (and after HPI adjustment £205,833) was a sale of the short lease.

34. Her starting point was the case in Mundy where the UT encouraged the use of sales of short leaseholds as the starting point in finding relativity. They referred however to a sale of short leaseholds at or around the AVD. In this case sales are some months prior and require HPA adjustment and an end allowance to remove the value of Act Rights. She referred to the UT decisions which confirmed valuers needed to look to actual transactions rather than the graphs as their starting point in calculating relativity. Only if this was unsatisfactory could a valuer use the average of the two graphs to find relativity in a particular case.
35. Her report confirms that as there was no short leasehold sale at around the valuation date at the Property itself, she had to refer to sales of short leases of similar flats at around the AVD.
36. She uses the sales of No.126, 52, and 16 Trotwood but, not of No.32 owing she maintained to the uncertainty of whether it included the value of a negotiated lease extension there.
37. No.126 was an estate sale, eventually by auction. It was listed 20 March 2020. (The Tribunal notes that this was about a week before the announcement of the Covid pandemic). The sale was only completed in May 2021 nearly a year later. The sale required a 3.5% buyers premium paid to the auctioneers, but, which she believes was included in the recorded premium price for that short lease.
38. No.52 was also an estate sale like No.126. It was listed July 2020. (The Tribunal notes that this was when the property marketing was almost completely stopped being in or around lockdowns). It completed eventually in February 2021 at a price when the property market was all but dead.
39. No.16 was sold with a garage on the same lease, albeit boarded up then (and now). To better analyse this sale the valuer referred to two recent sales of simple lock up garages as this one. At No.41 Trotwood freehold on 18 March 2020 at £17,000 by private treaty and at No.53 Burford Close leasehold of 95 odd years on 7 June 2021 for £14,500 at auction. Condition of both appeared to be average from details provided. She then used a deduction of £15,000 on the short leasehold price of No.16 to get the short lease value of th Property.
40. As with the valuer for the applicant she makes the identical HPI adjustments for time on the sales completion dates and in her analysis but not apparently in her tabulation makes allowance for ground floor as being 2.5% higher in value than the upper floors as the applicant had above. However she makes no adjustment for the two probate sales or

the auction means of sale in one. She also refers in her table of the three comparables of the 'average price at sale' from the Land Registry but this heading is not explained.

41. The valuer makes no further reference to the average relativity produced from the average of the Savills and Gerald Eve graphs and focuses solely on her analysis of these 3 sales. She adopts a final relativity again not shown in her table of comparables.
42. She finds an average sale of a short leasehold flat at this estate at the AVD of some £178,062 derived from the 3 time adjusted sales. She deducts the 6.28% from this to get to the value of the short leasedhold flat ignoring Acts Rights. Dividing this figure £166,880 from the virtual freehold of the Property to produce a relativity of 69.56%. When compared to the average of 77.71% from the Savills and Gerald Eve graphs she finds them too far apart and prefers the lower relativity from the sales analysis.
43. The report references a preference by buyers during the Pandemic for access to outside space and that as none of these flats have such space values are particularly depressed at the time of these particular sales. She is unconvinced that the PCL based graphs should be used this far out from the centre of London and mentions that the graphs dating from 2015/16 are themselves dated and unreliable in the face of onsite comparables.

Decision

44. A photograph of the front exterior and parts of the interiors of the Property and of comparables were included in both reports. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.
45. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3, (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.
46. The (a) diminution is: 3(1) The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and (b) the value of his interest in the flat once the new lease is granted.
47. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the (b) marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds

eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.

48. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement. Neither side contended for this.
49. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court and the unexpired residue of the lease for the Property is agreed.
50. The Tribunal notes the implied agreement that a 1% adjustment uplift to be made to the long leasehold value to get to the freehold.
51. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under their lease. There are two remaining terms a shorter initial one remaining at £120pa and the final 33 years at £180pa.
52. The effect of the lease extension will deprive the landlord of the property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the flat.
53. Both parties recognised and accepted the three transactions here set out by both valuers though subject to different analysis. The valuer for the applicant also referenced the sale of No.32 Trotwood and the respondent's value provided details of two garage sales for use in the devaluation of No.16 Trotwood. The Tribunal found all of these and their analysis of value when trying to understand the market for these properties at and around the AVD.
54. Although the announcement of the Covid Pandemic and Lockdown and other measures occurred around the end of March 2020 neither party made much further reference. However the Tribunal believes that this event had a considerable effect on values and the sort of transactions parties were willing to enter into, albeit within a relatively short period of 2020. The effects of this shock to the system were still to be seen in deals finally concluded (after considerable delay in conveyancing following the Lockdowns of 2020) only in 2021. Sellers entering into sales subject to contract in early 2020 onwards to late 2020 especially if under pressure to sell, as in the case of No.126 and 52 estate sales, concluded sales recorded in May and February 2021 but, which still reflected market conditions from the middle of 2020. The Tribunal believes that this alone makes sales agreed STC from April in 2020 unreliable and artificially low when considered it only finally sold in 2021. The Tribunal finds the prices paid at No.126 and No.52 unreliably low.

55. An allowance for a higher ground floor value than first, is arguable either way and the Tribunal would ordinarily not see any increase or decrease here, without clear evidence of a trend. As it happens both parties increased the value of the GF in their analysis by 2.5%.
56. The sale of No.16 although a notably higher value of the two flats 126 and 52 would have been agreed in late 2019 well before the Covid. It may be a more reliable sale, but then requires 18 months adjustment to the AVD. It also requires a deduction of some 7.5% to remove the value for the garage that went with that flat. However the Tribunal found the £15,000 taken off by the landlord's valuer is excessive. This is a short lease and the adjustment must be nearer £10,000 reflecting the shortness of the lease at No.16 giving a time adjusted sale price of some £185,000 or at the AVD and, as it happens, more in line with the respondents analysis.
57. The Tribunal also finds the sale of No.32 Trotwood provided and analysed by both valuers in the reports is more helpful in confirming a short leasehold price of £205,000 if as both parties appear to accept it does not include the premium said to be around £30,000 for the negotiated lease extension, separately but on the same date.
58. The Tribunal recognises some of the unique market conditions at and around AVD, their effect on the sale prices achieved when under offer and later on completion. They do throw up an unusual inconsistency. Had there been no Lockdown or Covid its quite likely these short lease sales would have been agreed STC for higher values during 2020, required considerably fewer adjustments and accorded better with those relativity figures from the graphs. The Tribunal accepts the applicant's valuer's case that on this occasion. Although there are some sales of short leaseholds, which are of interest and persuasive, in carrying out the exercise of their analysis and application to the Property, for differing reasons they all require a few too many adjustments and of too great a significance. The Tribunal therefore on balance prefers the use of the average of the relativities derived from the average of the Savills and Gerald Eve No Act Rights graphs here therefore.
59. Having found no significant errors in the arithmetic of the applicant's final valuation and not seeking to micro-tune the resulting calculations and allowances used to reach a premium figure, the Tribunal adopts the applicant's valuation and does not produce its own.
60. **The premium payable for this lease extension application is as stated above in the opening paragraph of this Decision.**

Name: Neil Martindale

Date: 25 October 2022