



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

**Case reference** : **LON/00BA/OLR/2021/0376**

**HMCTS code  
(paper, video,  
audio)** : **V: VHSREMOTE**

**Property** : **Flat 1, 4 The Drive, Wimbledon, London  
SW20 8TG**

**Applicant** : **Michael Treays, Alexandra Barbara  
Kathleen Treays & Hugo Gordon Treays**

**Representative** : **Michael Treays FRICS (retired)**

**Respondent** : **Shulem Berger Association Limited**

**Representative** : **Eric Shapiro FRICS**

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

**Tribunal members** : **Judge Timothy Powell  
Mr Richard Waterhouse FRICS**

**Date of  
determination and  
venue** : **7 December 2021 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **24 January 2022**

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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 not objected to by the parties. The form of remote hearing was V: VHSREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested one and all issues could be determined in a remote hearing. The documents that the

tribunal were referred to are in a PDF hearing bundle of 243 pages, the contents of which have been noted. The applicants' representative said that he had not participated in a video hearing such as this before, but he and the respondent's representative coped admirably with the technology throughout the hearing.

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

The appropriate premium payable for the new lease is **£84,262**.

### **Background**

1. This is an application made by the applicant leaseholders 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 the grant of a new lease of Flat 1, 4 The Drive, Wimbledon, London SW20 8TG (the "property").
2. By a notice of a claim dated 2 December 2020, served pursuant to section 42 of the Act, the applicants exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicants held the existing lease granted on 30 January 1978 for a term of 99 years from 29 September 1977 at an annual ground rent of £35 for the first 25 years, £70 for the next 25 years, £140 for the next 25 years and £280 for the residue of the term. The applicants proposed to pay a premium of £33,945 for the new lease.
3. On 3 February 2021, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £111,500 for the grant of a new lease.
4. On 28 April 2021, the applicants applied to the tribunal for a determination of the premium.

### **The issues**

### **Matters agreed**

5. The following matters were agreed:
  - (a) The subject property is a raised ground floor converted flat in a building built in circa 1901-1909, with direct rear access to a communal garden, with no parking. EPC rating 62 (Band D);
  - (b) The gross internal floor area is 863 square feet, which equates to 80 square metres;
  - (c) The valuation date: 3 December 2020;
  - (d) Existing lease term: 99 years from 29 September 1977;

- (e) Unexpired term: 55.82 years;
- (f) Ground rent: £35 per annum, doubling every 25 years;
- (g) Deferment rate: 5%;
- (h) Freehold value of the flat is 1% more than the long leasehold value.

### **Matters not agreed**

6. The following matters were not agreed:
- (a) The freehold vacant possession (FHVP) value of the flat: the applicants contending at the hearing for £469,500 and the respondent contending for £650,000;
  - (b) The long leasehold value of the flat: the applicants contending at the hearing for £465,000 and the respondent contending for £643,564;
  - (c) The existing lease value/relativity: the applicants contending for £410,000 and the respondent contending for £489,060;
  - (d) Ground rent capitalisation rate; and
  - (e) The premium payable.

### **The hearing**

7. The hearing in this matter took place on 7 December 2021, by remote video conferencing. The applicants were represented by Mr Michael Treays FRICS (retired), and the respondent by Mr Eric Shapiro FRICS.
8. Although the possibility of an inspection was discussed at the hearing, 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. This was particularly so given the plethora of colour photographs of the subject property and comparables in the hearing bundle.
9. The applicants relied upon the expert report and valuation of Michael Treays dated 27 October 2021 and the respondent relied upon the expert report and valuation of Mr Shapiro dated 18 November 2021.

### **The subject property**

10. The subject flat is located on the raised ground floor of a property built between 1901 and 1909 and now converted to house seven flats. The flat has a rear door giving direct access to the communal garden, which is combined with the garden of No.6 The Drive, in the same ownership, though this arrangement has no legal status and could terminate without

notice at any time. There is no off-street parking included in the demise. There are adjoining garages, which are separately let.

11. The gross internal area (GIA) of the flat is 863 square feet (80m<sup>2</sup>). The plan to the lease shows a single rectangular area with no internal dividing walls, though it appears that the original flat may have contained one bedroom (double), a large reception room, kitchen, and bathroom/WC. Following the purchase of the flat by the current leaseholders some 13 years ago, several improvements were made including the creation of another bedroom by the erection of a stud partition in timber and plasterboard, replacing the boiler and some kitchen fittings, installing a walk-in shower and tiling to the walls and ceiling of the bathroom.
12. The building itself is located on the west side of The Drive, a wide and quiet residential street at the western end of a road known as Ridgway, in the district of Wimbledon, in the London Borough of Merton in south-west London. It is described by the applicants as a “respectable address” but “not a prime location”. It benefits from good transport links, including Raynes Park and Wimbledon railway stations, about 1km and 1.5-2kms away, respectively.

#### **Long leasehold value/ FHVP**

13. The two valuers approached the valuation of the long lease value of the subject flat very differently, contending for a long lease value of £465,000 for the applicant and £643,564 for the respondent.

#### **Mr Treays’ approach**

14. For the applicant, Mr Treays relied upon an analysis of one-bedroom flats in SW20 that were being marketed and listed on Zoopla or Right Move on 7 November 2020 (nearly four weeks before the valuation date on 3 December 2020). On Zoopla there were 62 one bedroom flats with only four being priced above £450,000; and three of those, being modern purpose-built luxury flats, were not at all comparable. The remaining flat was priced at £500,000 with a private garden, but it failed to sell and was subsequently withdrawn. Similarly, of the 64 bedroom flats on Right Move, the same three luxury flats were the only ones priced over £450,000. Overall, the bulk of comparable properties were priced between £300,000 and £400,000. Though the listings did not always show the unexpired term being marketed, most will have been considerably longer than 60 years, given the current difficulty of securing mortgages on shorter terms. Mr Treays adopted a long leasehold value of £465,000, which put the subject flat in the top tier of the analysis, which, he said, reflected its large floor area compared to other one-bedroom flats.

15. In support of his valuation of £465,000, Mr Treays referred to five nearby comparable properties, all in SW20, at paragraph 6.2 of his report. He said it was significant that there were no comparables of one-bedroom flats in converted buildings in SW20 that could be found anywhere near a price of £465,000. While his valuation at this level “is not directly supported by hard evidence”, Mr Treays had exercised his professional judgement “as a locally based surveyor who has lived in Wimbledon for 45 years”, based on what little market evidence is available and his experience.

### **Mr Shapiro’s approach**

16. For the respondent, Mr Shapiro adopted a different valuation approach. Whereas Mr Treays relied on comparables that were one-bedroom flats, Mr Shapiro followed what he called “the standard methodology” of valuing the flats sold on long leases and the subject flat on a rate per square foot basis. He relied upon a list of 10 long lease/ freehold sales between May 2018 and November 2021, four of which coincided with comparables relied upon by Mr Treays and four of which were in the SW19 postal district, in Edge Hill and Darlaston Road. Mr Shapiro adjusted the long lease evidence to FHVP by applying the percentages set out in *Earl Cadogan v Betul Erkmán* [2011], paragraph 6.2 of his report. Having done so, he then index-linked them to the valuation date using the Land Registry London Borough of Merton Flat Prices Index (which Mr Treays criticised as covering too wide an area). He then made numerous capital adjustments for improvements and garage/off-street parking, before making percentage adjustments for building quality, building condition, quality of location, communal garden, direct access to communal gardens, tall ceilings/ceiling height, eaves and quantum, where necessary, to bring the comparables in line with the subject flat.
17. After adjustments, the 10 sales showed a range of between £694 and £811 per square foot, with an average of £755 per square foot. Applied to the gross internal area (GIA) to the subject flat (863 sq ft) this gave a freehold value of £651,565, which Mr Shapiro rounded down to £650,000, which he adopted in his valuation. The value of the extended lease in Mr Shapiro’s valuation, at £643,564, represents a 1% adjustment from the freehold value.

### **The tribunal’s determination**

18. The tribunal determines that the FHVP value is **£550,000** and the long lease value is **£544,544**.

### **Reasons for the tribunal’s determination**

19. Mr Treays is a very experienced retired surveyor. He was an equity partner in Savills for 11 years, has written for the RICS, was on the RICS

arbitrators panel, has given expert evidence in court and, until his retirement, practised as a consultant surveyor from Wimbledon. Much of his evidence and submissions were drawn from 45 years living in and knowledge of the area. While his report contains the usual expert declarations, nonetheless, there is a problem because Mr Treays is also a co-lessee of the subject flat and he has a direct financial interest in the outcome of the case. However much of his professionalism he has brought to the case, it is inevitable that his interest will adversely affect the weight that the tribunal can give to his presentation.

20. Much was made of the relative advantages and disadvantages of the subject flat in terms of its location, size and character. From the photographs, it is clear that The Drive is a desirable location. It is easy walking distance to two train stations. It is a large flat on a raised ground floor which gives it the advantage of being slightly higher than a ground floor flat and less likely to suffer from damp. The flat has a lot going for it and the tribunal does not consider it relevant how the flat is labelled. Mr Treays bought a one-bedroom flat and saw the potential to convert it to a two-bedroom flat, which he did. A third party's bid for this flat is likely to be down to its larger than usual extent. Where the tribunal departs from Mr Treays is that he believes the description as an "one-bedroom flat" reflects its value, whereas whether it is a one- or two-bedroom flat is a matter of pure fact. The tribunal accepts that a purchaser would consider the potential presented by such a large GIA.
21. Mr Treays relied upon three one-bedroom flats as comparables, which were inflexible in terms of their layout. They will be one-bedroom flats forever, unlike the subject property. They also lacked the positive features of the subject property, two of them not having gardens, or being much more modern and lacking the characteristics of the subject property.
22. Mr Treays had made very few adjustments to reflect the differences of his comparables from the subject property. As the comparables lacked the flexibility, versatility and characteristics of the subject flat, without adjustments the tribunal could not give them a great deal of weight.
23. Mr Shapiro took a very forensic approach, with a wider basket of comparables and numerous adjustments, probably too many. The comparables analysed by Mr Shapiro ranged from May 2018 to November 2021, a 2½ year period, and were drawn from a wide geographical area, including outside the subject area SW20, and had a relatively wide size difference. Of the comparables, four were in SW19 which the tribunal accepts does attract a premium.
24. There were some errors in Mr Shapiro's analysis schedule, but the corrections did not affect the average rate per square foot that he achieved. However, in his analysis, after adjustments, all the sale prices of properties in SW20 increased. The first three properties in SW19 had

off-street parking or a garage, for which Mr Shapiro deducted £5,000 or £20,000.

25. One of his comparables was the next-door sale of Flat 5, 6 The Drive. This is a three-bedroom property with a communal garden that sold for £770,000 on 29th August 2019, some 15 months before the valuation date of the subject property. This property was on the second and third floors and some of the rooms in the upper floors were affected by eaves. It was also larger in size at 1,283 square feet. Although, by analysing the sale price by the application of adjustments, Mr Shapiro arrived at a rate per square foot close to the average in his schedule (£767, reduced from £769 due to unallocated shared off-street parking which had not been included), the flat itself was so significantly different to the subject flat, that the tribunal was reluctant to place any great weight upon it.
26. Mr Treays criticised Mr Shapiro's valuation methodology as "an academic approach". The tribunal also had misgivings about the number of adjustments made by Mr Shapiro and the inclusion of properties in SW19, which was considered to be a superior area and which inherently produces a figure higher than the tribunal would expect for the subject area, SW20. As a result, the tribunal was unable to rely fully upon the application of his average rate per square foot to the GIA of the subject flat to produce a reasonable FHVP value; indeed, the tribunal was concerned that by doing so, the FHVP produced was distorted and overinflated.
27. On the other hand, Mr Treays did not adequately provide evidence of properties that were larger than the subject property so that a comparison could be made. Overall, therefore, the tribunal was dissatisfied by the outcomes of both valuation methods proffered by the experts, for different reasons.
28. The parties furnished the tribunal with two sets of sales comparable properties. All comparables were considered and appropriate weight given to them.
29. Mr Treays' evidence included a search on Zoopla about a month before the valuation date. The search was in relation to one-bedroom flats. 62 were found with the majority having sold for between £300,000 and 400,000. Broadly speaking, with a price distribution as shown for one-bedroom flats, a two-bedroom flat would expect to attract additional premium, potentially around £100,000 to £150,000. Given the physical and location specification of the subject flat, extrapolation of these figures would be expected to be towards the upper end of the bracket indicating a long lease value of around £550,000.
30. We now consider each of Mr Treays' comparables in turn.

31. Flat 3, 4 Arterberry Road: this property is close geographically but very much smaller. Given the 384 sq ft floor area is less than half the size of the subject property, with its potential to be a two-bedroom flat, and that it sold in October 2019 at £284,000 with the benefit of a 949 year lease, the adjustments to match the subject property are several. It would not be unreasonable to assume an uplift almost doubling the price to around say in the region of £568,000 for the subject property.
32. Flat 7, 34A Arterberry Road: this property was sold twice relatively shortly, the last sale being October 2018 for £418,000 with the benefit of communal off-street parking and an unexpired term of 118 years. An examination of the floor plan showed that despite its floor area of 659 sq ft, this was a much inferior layout to the subject flat, with the bedroom on the upper level and a bathroom on the lower floor. The upper level was in the eaves and would therefore have sloping ceilings, and all ceilings were likely to be lower. It also did not have the benefit of a garden. Mr Treays made no adjustments to the sale price to reflect these elements. While the location is close, the layout and specification are much poorer; and no potential for two-bedroom use is suggested. As such, adjustments for size and specification would indicate a value of around £500,000 for the subject property.
33. Flat 4, 31 Arterberry Road: this property was a three-bedroom flat with a garage, which sold for £525,500 in May 2020 with the benefit of a 999-year lease from 1998. However, there was no agreement on the detail of property, so the suggested transaction price cannot carry very much weight.
34. 4A Mark Terrace, 2 The Drive: this was a further three-bedroom flat, described as a relatively modern maisonette and located almost opposite the subject property. It sold for £580,000 in February 2021 with a lease term of 125 years from 2005. Fuller details were found at page 172 of the hearing bundle. It appears to be a 1980s development on two floors, with no parking or garden and no tall ceilings. In Mr Shapiro's view it had virtually no character. Once again, Mr Treays did not make any adjustments to the sale price to mark the differences with the subject property. The critical difference with this compared with the subject property is the age and character. The market may well place a premium on age and character, with further adjustment for date. Details of the exact size are absent. The weight is therefore limited but it may indicate may indicate the £580,000 is in excess of a value of the subject property.
35. Flat 3, Burvill Court, 21 Langham Road is a one-bedroom flat sold in March 2021 for £425,000 to include a garage. This is a garden flat with direct access to a communal garden with a floor area of 699 square feet and an unexpired term of 139 years. The property is within a 1960s block and so lacks the desirability and features found in the subject property. Adjusting for the date, style, lack of garage of the subject property but



potential for use as two bedrooms, this would indicate a value of the subject property in excess of £500,00 to £525,000.

36. Considering Mr Shapiro's more forensic approach, he concluded a rate per square foot of £755 and applying it to the area of 863 square feet and rounding this gave him a value of £650,000. This forensic approach entailed a spreadsheet with a considerable number of adjustments. The more adjustments the less reliable the outcome. Additionally, many of the respondent's comparables were drawn from a postcode which is associated with increased premium over SW20, the locality of the subject property. As such, the tribunal making an adjustment of 15% to Mr Shapiro's adjusted premiums results in a suggested premium of £552,000.
37. Taking all these comparables and adjustments as outlined above into account and relying upon its own expertise and experience, the tribunal determines that the FHVP value of the subject property is £550,000 from which it determines, by an adjustment of 1%, that the appropriate long lease value is £544,554.

### **Short lease value**

38. There was one piece of real evidence, being the sale of Flat 6, 4 The Drive, SW20, on 8 February 2018 for £390,000. Mr Treays said that this was a sale in the same building, and it provides the best evidence. It is a split level, one-bedroom flat on the second and third floors of the building, with a comparable floor area of 828 square feet. It had an unexpired term of approximately 58 years with identical ground rent provisions and lease. It sold for £390,000 in February 2018 and subsequently the lease was extended in October 2018, though in his report Mr Treays does not say what the price paid was for the extension. Mr Treays said that the flat had been widely marketed at £500,000 and was sold to an existing resident in 4 The Drive, but said there is no evidence to suggest that this was a special purchaser.
39. Although he did not give details, Mr Treays said that he personally knew both purchaser and vendor. He made various adjustments to the sale price, including a -1% reduction for the effect of the COVID-19 pandemic and lockdown on flat sale prices. Mr Treays said that this real market evidence cannot be ignored and should prevail, subject to minor adjustments that he set out earlier in his report. Taking the prime evidence of £390,000 achieved on Flat 6 and adjusting it by +5% produced a figure of £409,500, but say £410,000 for the short lease value.
40. In his report, Mr Shapiro analyses this single sale, also making adjustments in paragraph 7.3.1 of his report. This produced a rate of £536 per square foot for the existing lease. However, he questioned the validity of this one comparable, suggesting that it was unreliable due to

the relativity it produced, the fact that it was nearly three years old and that it was only one piece of evidence. Mr Shapiro said that this was not credible open market evidence and, therefore, it was appropriate to use a relativity percentage derived from the appropriate graphs as per the decision of the Court of Appeal in *Munday v The Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35 and the Upper Tribunal in *Deritend Investments [Birkdale] Limited v Ms Kornella Treskonova* [2020] UKUT 0164 (LC).

41. In the hearing, Mr Treays said that the lease extension for Flat 6 had been agreed at £60,000. He said that Mr Shapiro himself had been involved in that transaction, but Mr Shapiro was unable to confirm that. He said it was inadmissible as evidence because it was not in Mr Treays' report and he had not prepared to deal with this issue. Mr Treays suggested that the addition of £60,000 pounds to the £390,000 sale price gave a long lease value close to the £465,000 for which he contended for the subject flat.

### **The tribunal's determination**

42. The tribunal determines that the short lease value is **£413,820**.

### **Reasons for the tribunal's determination**

43. The tribunal accepts that the sale of Flat 6, 4 The Drive is a piece of real evidence. If there was a collection of similar short lease sales the tribunal could take some comfort from this sale and could ascribe weight to it. However, it is only one piece of evidence and it needs support for it to be a broad basis of evidence.
44. This is also a split level flat, not a garden flat like the subject property, where the top floor rooms are affected by eaves. The tribunal is unable to accept Mr Treays' -1% time adjustment. It needs an index for the tribunal to accept such an adjustment. While the variation in flat sale prices due to COVID-19 may reflect Mr Treays' professional understanding, a more rigorous academic and forensic approach is needed if such an adjustment is to be made. The nature and extent of this accommodation and the time difference leads us to conclude that these are factors that make it inappropriate to rely upon this sale alone as good evidence of the short lease value.
45. We are therefore left with one piece of evidence against the use of relativity graphs; and in this instance the tribunal prefers the relativity graphs. The evidence in the respondent's report at para 7.3 from Flat 6, 4 The Drive, shows a relativity of 70.99%. The relativity from the average of the Savills and Gerald Eve 2016 graphs for a lease of 55.82 years (the approach endorsed in *Deritend*), is 75.24% of the freehold vacant possession value. Whilst evidence in the locality and from the market is

of substance, the tribunal finds and prefers the use of the graphs ascertained from many transactions as being more substantive and robust. The tribunal therefore determines that the value of the existing lease is £413,820.

46. **Capitalisation rate**

47. Mr Treays contended for a capitalisation rate of 7% and Mr Shapiro for 6%. In the hearing, Mr Shapiro suggested to Mr Treays that they agree the midpoint at 6.5% but Mr Treays refused to do so, leading Mr Shapiro to suggest this was an example of his intransigence.

48. The tribunal passes no comment on that, but considers that there has been a history of low interest rates with no reason to expect any changes and would therefore opt for 6% rather than 7%, in the present case.

**The premium**

49. The tribunal determines that the appropriate premium payable to the landlord is **£84,262**. A copy of its valuation calculation is annexed to this decision.

**Name:** Judge Powell

**Date:** 24 January 2022

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

**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).

## Valuation under Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993

### Premium payable for an extended leasehold Interest in Flat 1, 4 The Drive, Wimbledon, London, SW20 8TG

Facts		Value		
Lease Start date	29/09/1977	Extended lease value	£544,554	
Lease term	99 years	FH VP value	£550,000	
Lease expires	28/09/2076	Relativities	75.24%	
Valuation Date	03/12/2020	Capitalisation rate	6%	
Unexpired term	55.82 years			
Number of years to review		1st 28/09/2027 6.82	2nd 28/09/2052 25	3rd 28/09/2076 24
Rent passing		£70	£140	£280
Capitalisation rates	Term	6.00%		
	Reversion	5.00%		
Value of extended lease				<b>£544,554</b>
Value of existing lease			75.24%	<b>£413,820</b>
<b>Value of Freeholder's current interest</b>				
Rent reserved YP to 1st review			£70.00 <u>5.4637</u>	£382
Reversion to YP to 2nd review PV of £1 to 2nd review		12.78382 0.67218	£140.00 <u>8.593</u>	£1,203
Reversion to YP to 3rd review PV of £1 to 2nd review		12.55085 0.1566	£280.00 1.9654	£550
Reversion to VP value PV of £1 to Reversion after current term			550,000 0.06564	
				<u>£36,102</u> <b>£38,237</b>
<b>Value of Freeholder's proposed interest</b>				
Reversion to VP value PV of £1 to Reversion after proposed term		£550,000 0.00081		<u>£446</u>

<b>Reduction in freeholders interest value</b>	<b><u>£37,791</u></b>	
	<b>£451,611</b>	
<b>Plus 50% marriage value</b>		
Long leasehold proposed interest	<b>£544,554</b>	
Freeholders proposed interest	<b><u>£446</u></b>	
		<b>£545,000</b>
Less		
Leasehold present interest	<b>£413,820</b>	
Freeholder present interest	<b><u>£38,237</u></b>	
		<b><u>£452,057</u></b>
<b>Marriage value - value of proposed interests less value of future interests</b>		
£545,000 less		
£452,057		<b>£92,993</b>
<b>50% Marriage Value</b>		<b>£46,471</b>
<b>Premium - reduction of landlord's interest plus 50% of marriage value (£46,471 plus £37,791)</b>		<b>£84,262</b>