



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

Case Reference : **KA/LON/00BF/OLR/2019/0250**

Property : **5 Mansard Manor & Garage 10,
Christchurch Park, Sutton, Surrey
SM2 5UB**

Applicant : **Kornelia Treskonova**

Representative : **Ms G de Cordova of counsel & Mr.
W Dunsin FRICS**

Respondent : **Deritend Investments (Birkdale)
Ltd**

Representative : **Mr. P Harrison of counsel & Mr. R
Sharpe BSc FRICS**

Types of Application : **Lease extension**

Tribunal Members : **Judge Tagliavini
Mr. C Norman FRICS**

**Date and venue of
Hearing** : **2 July 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **1 September 2019**

DECISION

Summary decisions of the tribunal

- I. Relativity is **82.22%**.
 - II. The existing lease value is **£210,395**.
 - III. The premium payable is **£30,264**.
-

The application

1. This is an application made under the provisions of section 48 of the Leasehold Reform, Housing Development Act 1993 (“the 1993 Act”) seeking the tribunal’s determination of the premium payable for a lease extension of premises situate at 5 Mansard Manor & Garage 10 (“the premises”).

Background

2. In a Notice of Claim dated 10th July 2018 the applicant sought to exercise her right to extend her lease for a premium payable of £27,500. In a Counter Notice dated 13th September 2018 the respondent accepted the applicant’s right to extend her lease but proposed a premium of £57,990. The freehold title of the premises is owned by Metropolitan Properties Co (FCG) Limited which is subject to a head lease of which the respondent is the lessee. The applicant holds an interest in the premises pursuant to a lease of the premises dated 8th February 1977 for a term of 99 years from 24th June 1975 to 23rd June 2074 at a ground rent of £30 per annum increasing to £120 per annum.

The premises

4. The premises comprise a one bedroom flat on the second floor of a three storey a block of twelve units with a gross internal floor area of 469 sqft. The premises also includes a single garage within the block of garages. There are communal gardens and communal car parking spaces within the development. Mr. Dunsin described the premises as being located on the second floor of a 1970’s block in contrast to Mr. Sharpe’s description of a top floor flat in a 1950’s purpose built block of twelve flats. However, that he tribunal is satisfied the lease plans provide make it clear that the premises are located on the second floor of the block.

The issues

5. The following issues were not in dispute:
 - (i) Terms of the extended lease
 - (ii) Lease date 8th February 1977

- (ii) Valuation date of 10th July 2018
 - (iii) Capitalisation rate 6.5%
 - (iv) Deferment rate 5%
 - (v) Unexpired term at date of valuation 55.95 years
 - (v) Ground rent of £30 per annum rising to £120 per annum
 - (vi) Freehold vacant possession (FHVP) £255,893
6. The parties therefore sought only the tribunal's determination of the remaining issue of relativity and the existing leasehold value and therefore the premium payable.

The Applicant's evidence

7. The Applicant relied upon the oral evidence of Mr. Wilson Dunsin FRICS who spoke to his valuation report dated 18th June 2018. In his oral evidence Mr. Dunsin told the tribunal that his report was based upon his inspection of the premises on 10th April 2019 and that he had calculated the premium payable in accordance with the provisions of Schedule 13 of the 1993 Act. In his oral evidence in respect of the existing lease value Mr. Dunsin told the tribunal that the 1993 Act required the valuation to assume that the existing lease of the relevant flat does not have the rights under the 1993 Act to acquire any new lease. Mr. Dunsin referred the tribunal to the case of *Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC) ("Munday") and the three main methods used by valuers to determine the statutory existing lease value comprising (i) reliance on transactional evidence of the subject premises or comparables of similar short lease properties which do not have 1993 Act rights; (ii) transactional evidence of the subject premises or comparables of similar short lease properties which have 1993 Act rights and (iii) reliance on Relativity graphs which give the percentage between the freehold value and the statutory existing lease value.
8. In valuing the existing lease value and the absence of a recent transactional evidence of the subject property or suitable short lease comparable sales, Mr. Dunsin relied upon the use of the Relativity graphs to support his approach to the calculation of the existing lease value/relativity. Mr. Dunsin determined the relativity by taking the average of the Greater London and England graphs included in the RICS Research Report on Graphs of Relativity. Mr. Dunsin accepted that although not perfect, as all the graphs had their shortcoming, they provided the best basket of evidence of evidence available for the determination of the relativity in the Greater London area in the absence of transactional evidence.
9. Therefore, taking the average of the five graphs (Beckett and Kay 2009; South East leasehold; Nesbitt and Co; Austin Gray and Andrew Pridell Ltd.) resulted for a 55.9 year lease in a relativity of 82.22%. Applying this relativity to the FHVP value of £255,893 resulted in an Existing Lease Value (without 193 Act rights) of £205,233. Applying the figures either agreed or calculated above and including marriage value,

resulted in a premium payable of £30,264 (as set out in his revised valuation).

10. During cross-examination, Mr Harrison questioned Mr Dunsin about evidence that he gave to the tribunal in *46b Moyser Rd, SW6* (LON/ooBJ/OLR/2018/0776) a similar and recent (2018) lease extension application. Counsel asserted that the evidence was “diametrically different” when Mr Dunsin acted for the freeholder. The report of that case was not available to the tribunal at the hearing but having subsequently read that decision (paragraphs 18 and 19) the Tribunal agree that there is a marked inconsistency in the approaches adopted by Mr Dunsin in the two cases. In *Moyser Road*, Mr Dunsin asserted that PCL graphs should be used and rejected the five Greater London graphs in the RICS document, a document upon which, he now relied.

The respondent’s evidence

11. Mr. Harrison for the respondent submitted that the approach adopted by Mr. Dunsin was flawed as the graphs are unreliable because they measure historic relativity whereas recent Upper Tribunal decisions have recognised that relativity has diminished over time, *Munday*. Therefore, since *Munday*, the Upper Tribunal has endorsed a preference for transactional evidence over the use of relativity graphs where that evidence is reliably, *Mallory v Orchidbase Ltd.* 2016 WL 066639488 where an unexpired term of 57.68 years gave rise to a relativity of 76.25%, a figure below the Gerald Eve 1996 graph. Mr. Harrison submitted that the average relativity derived from the graphs relied upon by Mr. Dunsin would be 83.80%.
12. In oral evidence Mr. Sharpe BSc FRICS spoke to his valuation report dated June 2019. On his evidence as to the issue of the Existing Leasehold Value, Mr. Sharpe told the tribunal that adopting the approach in *Munday* the starting point is to look for reliable market evidence. However, the most recent transaction evidence is that provided by auction details where the premises were marketed in April 2019 for £200,000 inclusive of 1993 Act rights. Mr. Sharpe told the tribunal that he had therefore looked at the graphs deemed to be reliable by the Upper Tribunal in *Munday* which are the Savills 2015 Enfranchiseable Graph of Relativity and the updating of Gerald Eve 1997 graph by the GE 2016 table and graphs of relativity following comment in *Munday* that Gerald Eve graph may now overstate relativity. Further, Mr. Sharpe criticised the RICS research document graphs as failing to take into account the financial situation post financial crash and the more stringent criteria imposed since for both new and existing borrowers.
13. Mr. Sharpe told the tribunal that these two graphs relate to prime areas and therefore the relativity in Sutton where the subject premises are located is likely to be lower and transactions more mortgage dependent. Mr. Sharpe told the tribunal that these two graphs produced lower relativity

than shown in RICS research graphs relied upon by Mr. Dunsin 75.4% relativity – Savills and 75.5% relativity – Gerald Eve.

14. Mr. Sharpe state that he regarded the Beckett and Kay graph which indicated a relativity of 67% is the most reliable and most appropriate for a property located in the suburbs, as this had been kept up to date until recently and covers a mortgage dependent area. Consequently, by taking an average of the relativities indicated by this and the most reliable graphs (67% and 75.4%) this produced a relativity for the subject premises of 71.2%.
15. Therefore, in a revised valuation Mr. Sharpe proposed a premium payable of £44,381.

The tribunal's decisions and reasons

16. In the absence of market transactions, the tribunal were required to determine whether the approach of Mr. Dunsin and his reliance on the average of five graphs from the RICS Graphs of Relativity 2009, or Mr. Sharpe's reliance on the average of the Beckett and Kay and Savills graphs was the most appropriate approach in determining the issue of relativity.
17. The tribunal found the evidence of both expert witnesses to be unsatisfactory. The tribunal finds it necessary to treat Mr. Dunsin's evidence in this application with considerable caution, due in part to the inconsistency in his evidence when compared with his evidence in the previous tribunal decision in *Moyer Road*. As to Mr Sharpe's evidence, the Tribunal does not accept that it is appropriate to use PCL graphs in relation to a small one-bedroom flat in Sutton. Nor does the Tribunal consider it appropriate to identify and rely upon one only of the RICS Greater London graphs. In the circumstances the tribunal is constrained to rely on its own knowledge and judgment. The tribunal considers that the least unsatisfactory approach is to adopt an average of the five Greater London graphs, which gives a relativity of 82.22% and gives rise to an existing lease value of £210,395.
18. Therefore, applying the figures found by the tribunal to be applicable the tribunal determines that the premium payable is £30,257 adjusted to £30,264 as being the lowest of the figures provided by either Mr. Dunsin and Mr. Sharpe, *see valuation attached*.

Signed: Judge Tagliavini

Dated: 1 September 2019

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 might 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 , such application must include a request for an extension of time and the reasons 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 these time limits.

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).

APPENDIX

**IN THE MATTER OF 5 MANSARD MANOR AND GARAGE 10 CHRISTCHURCH PARK SUTTON SURREY SM2 5UB
VALUATION BY THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)**

| | | | | | | |
|---------------------------------|--|--|--|--|------------|-------------|
| Date of Valuation | | | | | agreed | 10-Jul-2018 |
| Lease expiry date | | | | | agreed | 23-Jun-2074 |
| Unexpired Term / years | | | | | agreed | 55.95 |
| Virtual Freehold Value | | | | | agreed | £ 255,893 |
| Extended lease value | | | | | agreed | £ 253,334 |
| Relativity | | | | | determined | 82.22% |
| Existing lease value | | | | | determined | £ 210,395 |
| Ground rent capitalisation rate | | | | | agreed | 6.50% |
| Reversionary deferment Rate | | | | | agreed | 5.00% |
| Premium Payable | | | | | determined | £ 30,264 |

Diminution of Freeholder's Interest

Term 1

Ground rent £ 60.00 per annum

Years' Purchase 21.71 years @ 6.50% 11.46 £ 688

Term 2

Ground rent £ 120.00 per annum

Years' Purchase 34.24 years @ 6.50% 13.60
Present Value £1 in 21.71 years @ 6.50% 0.25
3.40 £ 408

Reversion

Value of virtual freehold of flat £ 255,893
Present Value of £1 in 55.95 years' time @ 5% 0.0652
£ 16,684

Less Value of Reversion in 145.95 years' time

value of virtual freehold of flat £ 255,893
Present Value of £1 in 145.95 years' time @ 5% 0.0008
-£ 205

Diminution in Value of Freeholders Interest

£ 17,575

Calculation of Marriage Value

Aggregate value of Proposed Interests

Leaseholder £ 253,334
Freeholder £ 205
Total Value of Proposed Interests £ 253,539

Less

Aggregate value of Present Interests

Leaseholder £ 210,395
Freeholder £ 17,780
£ 228,175

Marriage Value

£ 25,364

Divide equally

£ 12,682

Premium

£ 30,257

However, as this premium falls below £30,264, being the lowest contended for at the hearing, the Tribunal determines the premium in that sum.

Premium

£ 30,264