



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

Case Reference : **CHI/29UP/OLR/2020/0004**

Property : **Flat 2, 155 St. Marys Road, Tonbridge, Kent
TN9 2NL**

Applicant : **S. L. Killick and D. R. Killick**

Represented by : **Warners Law LLP**

Respondents : **L. E. Wicking**

Represented by : **Kingsfords Solicitors**

Type of Application : **Determination of premium payable under
section 48 of the Leasehold Reform, Housing
and Urban development Act 1993**

Tribunal Member : **Mr. R. A. Wilkey FRICS**

Date of Decision : **Friday 14th August 2020**

DECISION

DECISION IN SUMMARY

1. The Tribunal has determined for the reasons set out below that:
 - (a) the appropriate relative value for the existing lease, unimproved but in repair, is 79.5% of the freehold vacant possession value.
 - (b) The premium payable to the Freeholder is £32,139.
 - (c) The information provided in respect of 153 St. Mary's Road is of very limited value and that assessment of the relevant graphs is the most appropriate method of calculating value in this case.

BACKGROUND AND CIRCUMSTANCES

2. This is an application by S. L. Killick and D. R. Killick under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) to determine the terms of acquisition of a new lease of Flat 2, 155 St. Marys Road, Tonbridge, Kent TN9 2NL
3. The Applicants served Notice dated 14 June 2019 under the Act seeking a lease extension of Flat 2, 155 St. Marys Road, Tonbridge, Kent TN9 2NL. Counter notice admitting the right to a lease extension was served by the Respondent on 20 August 2019.
4. Directions for the conduct of the matter were given by the Tribunal on 30th January 2020.
5. However, further directions were issued on 23rd June 2020 and the following extracts are pertinent:
 - (a) The Coronavirus pandemic and considerations of health have caused a suspension of inspections and hearings in person until at least 30th June 2020 and almost certainly considerably longer, in particular with regard to hearings. The 19th March 2020 Pilot Practice Direction for the First Tier Tribunal provides that decisions should now usually be made without a hearing.
 - (b) The Tribunal considers that this application is suitable for determination on the papers and that any relevant information which would have been obtained by the Tribunal at an inspection can be provided by the parties

by other means. The parties have written to the Tribunal stating that they agree to a determination on the papers in accordance with rule 31 of the Tribunal Procedure Rules 2013.

6. It follows from the above that the determination by the Tribunal has been made without an inspection or hearing and is based on the written submissions by the parties supplemented with its own knowledge and experience as an expert Tribunal.

DOCUMENTS

7. The Tribunal has been provided with a somewhat fragmented bundle of papers which include copies of:
- (i) A letter dated 28 May 2019 from Mr. Treiving to the Applicants which suggested a premium of £16,500.
 - (ii) A letter dated 27 August 2019 from Mr. Maunder Taylor to the Respondent which suggested a premium of £28,000.
 - (iii) A report dated 13 July 2020 from Mr. Treiving to the Tribunal which suggested a premium of £23,375.
 - (iv) A statement of Expert Opinion and submissions dated 9 July 2020 prepared by Mr. Maunder Taylor which suggested a premium of £32,221.
 - (v) Lease of maisonette No. 155 and garage 2 St. Mary's Road, Tonbridge, Kent. It is assumed that this relates to the subject property.
 - (vi) Tribunal's Directions dated 20 January 2020 and Further Directions dated 23 June 2020.
 - (vii) Tenant's claim for a new lease dated 14 June 2019 which suggested a premium of £16,500.
 - (viii) Landlord's counter notice dated 20 August 2019 which suggested a premium of £28,720.
 - (ix) Counterpart/Surrender and Lease of Lower maisonette 153 St. Mary's Road, Tonbridge, Kent TN9 2NL.

PREMISES

8. The premises are described by the Applicants' valuer as a self-contained ground floor maisonette in a two storey block of four similar units. There is a garage in a compound to the north of the block. The accommodation briefly comprises entrance hall, living room, two bedrooms, kitchen, shower room with shower cubicle, WC and wash hand basin. Outside there are gardens to front and rear. The report from Mr. Treliving includes a copy of sale particulars prepared by Rightmove but the address is not stated.

RELEVANT STATUTORY PROVISIONS

9. These include the following:

Section 56 of the Act imposes the obligation upon the landlord to grant a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease. Such grant is to be made upon the payment of the premium calculated in accordance with Schedule 13.

Schedule 13 provides that the premium to be paid by the tenant in respect of the grant of the new lease is to be the aggregate of:

- (1) The diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3 of Schedule 13 .
- (2) The landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (3) Any amount of compensation payable to the landlord under paragraph 5.

Paragraph 3 of Schedule 13 as amended sets out how the diminution in the value of the landlord's interest is to be calculated:

- (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
- (2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph 1(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the

open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions –

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that chapter 1 and this chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) [this deals with improvements]

(d) [this deals with rights and burdens]

(3) In sub-paragraph (2) “the relevant lease” means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph 1(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

MATTERS AGREED AND IN DISPUTE

10. The parties have helpfully prepared and signed a note of agreed facts and disputed issues as follows:
 - (i) It is agreed that the valuation date is 14 June 2019 when there were 60.78 years unexpired on the existing lease.
 - (ii) The existing [lease] is for a term of 99 years from 25 March 1981 paying £30/£60/£120 p.a. rising every 33 years.
 - (iii) The parties are agreed to capitalise the ground rents at 7% which therefore amount to a figure of £959.

- (iv) The parties are agreed that the freehold vacant possession value, unimproved but in repair, is £257,000.
- (v) The parties are agreed that the deferment rate is 5% per annum and that, therefore, the reversionary value is calculated at £13,270.
- (vi) The parties are agreed that the long lease value for marriage value calculation purposes is 99% of the freehold vacant possession value and therefore £254,925.
- (vii) There is an issue between the parties as to the value of the existing leasehold interest for marriage value calculation purposes:
 - The Applicants contend for 86% relativity
 - The Respondent contends for 79.5% relativity
- (viii) The parties are agreed that there is no other compensation pursuant to Paragraphs 2(c) and 5 of Schedule 13 of the Act.
- (ix) There is an issue between the parties as to the relevance of reliability of a lease extension transaction at Number 153 St. Marys Road, Tonbridge TN9 2NL.
 - The Applicants contend that, in November 2018, the flat sold for £255,000 and that the vendors paid £16,500 to extend the lease which might have included the freeholder's costs. The Applicants contend that this is a relevant and reliable transaction for comparison purposes for the subject application.
 - The Respondent contends that that transactional evidence is both irrelevant and unreliable. If the Tribunal finds it to be irrelevant, then it is submitted that it is also inadmissible as evidence in this case.

It follows from the above that the matters on which the Tribunal is requested to make a determination relate to numbers 7 and 9.

THE APPLICANTS' POSITION

11. The bundle contains an expert report dated 13th July 2020 from Jeremy Keith Treliving FRICS. Mr. Treliving is a chartered surveyor and an RICS Registered

Valuer. The report outlines his experience in this sort of work and includes the appropriate declarations relating to his impartiality and duty to the Court.

12. The Tribunal has read the whole of the contents but the following information is extracted from the report:

(a) Lessee's improvements include:

1. The renewal of windows and doors
2. Full kitchen refurbishment
3. Full shower room refurbishment
4. Upgrading of the electrical installation
5. Removal of asbestos cement sheet roof to the garage with a profile sheet covering.

(b) Mr. Treliving relies on a transaction at 153 St. Mary's Road which is a ground floor flat within the same block. It was sold for £255,000 as at November 2018. The premium paid was £16,500 for a lease extension to March 2140 (i.e. an extra 60 years) A new set of rising ground rents were fixed at £60 per annum to 24 March 2050, £120 per annum to 24 March 2080 and £240 per annum to 24 March 2140.

His position may be summarised:

I am content that there is no material difference in values between a lease on the same property with 120 years remaining unexpired as one with 150 years remaining unexpired.

This transaction is understood to have been fairly negotiated between the parties; both of whom are understood to have had knowledge of the legislation and property matters.

It is very rare to find specific evidence of transactions that are so relevant to the assessment of value. The lease surrender documentation is dated 19 October 2018 (some 5 days before the date stated on the Rightmove documentation) The valuation date for No. 155 (subject property) is 14 June 2019, just under seven months after the date of the transaction at No. 153.

The Valuer is content that in the light of this clear evidence of a near identical set of circumstances the premium to be paid for the lease extension at No. 155 should be £16,500.

The Valuer is well aware of decisions in the Upper Tribunal and Graphs of Relativity, but considered the information detailed above and documented by Land Registry has far greater relevance. However, if the Tribunal thinks otherwise the Valuer contends that a relativity of 86% is relevant based on average figures from the Published Research of Leading London based estate agents/surveyors and secondly the RICS providing for a figure of £23,375.

- (c) Mr. Treliving sets out a valuation of the premium to be paid to the Freeholder for the lease extension in the sum of £23,375.

RESPONDENT'S POSITION

13. The report from Mr. Maunder Taylor is dated 9 July 2020. He is a chartered surveyor and Property Valuer. The report outlines his experience in this sort of work and includes the appropriate declarations relating to his impartiality and duty to the Court.
14. The Tribunal has read the whole of the contents but the following information is extracted from the report:
- (i) *The only outstanding figure for the marriage value calculation is the value of the existing leasehold interest.*
 - (ii) *Neither valuer has found any market evidence specific to this case in order to assist the Tribunal to reach a determination based on open market values for a similar length of lease. Both valuers have arrived at a figure based on published graphs and it is submitted that that is the primary evidence being offered to the Tribunal for determination by both parties.*
 - (iii) *It is submitted that the starting point has been established by the Upper Tribunal (Lands Chamber) in the case of the Trustees of Sloane Stanley Estate -v- Mundy (2016) UKUT 0223 (LC). A copy is attached at Pages 18-61 of the report.*

- (iv) *The Tribunal's attention is drawn to that part of the decision headed "Future cases" starting at Paragraph 163.*
- (v) *With regard to Paragraph 166, it is submitted that the market has been influenced by various graphs of relativity for some years now and, at the valuation date for this particular property, the market was influenced by the Sloane Stanley -v- Mundy Upper Tribunal decision, and by a few subsequent decisions. The Sloane Stanley -v- Mundy Upper Tribunal decision related to properties in Prime Central London, has been criticised in cases outside Prime central London on that basis, but subsequent decisions have made it abundantly clear that such criticism is not valid and that has been reflected in the market. The decision in the High Foundation -v- Zucconi was for a property in suburban North London, and that subsequent Upper Tribunal decision (discussed later) supported the findings in Mundy.*
- (vi) *With regard to Paragraph 167, it is submitted that similar market circumstances were present at the valuation date as have been present in the interval period between Sloane Stanley -v- Mundy (May 2016) and the valuation date in this case.*
- (vii) *With regard to paragraph 168, there has been no market transaction of the property at around the valuation date so it is submitted that the guidance given in Paragraph 168 is not applicable to the subject case.*
- (viii) *With regard to Paragraph 169, it is submitted that this case is one which comes within the category of cases covered by Paragraph 169. Therefore, on the basis of expert opinion, I have considered the Savills' un-enfranchiseable graph as well as the Savills' enfranchiseable graph subject to an adjustment for the rights under the 1993 Act. I have then cross-checked those results against what I consider to be the appropriate graphs originally published in 2009 under the RICS report into relativity.*
- (ix) *I attach at Page 62 copy from the My Leasehold website of the current state of the published graphs for 60.78 years unexpired. I have noted that:*

The Savills' un-enfranchiseable graph (from which no further deduction or amendment is necessary) records a relativity for 60.78 years unexpired of 78.82%.

The Savills' enfranchiseable graph records a relativity of 83.71% for 60.78 years unexpired from which a deduction must be made for Act rights which is considered in the next paragraph.

- (x) The Upper Tribunal decision in Sinclair Gardens Kensington Limited gives a summary of Upper Tribunal decisions on deductions for Act rights and I exhibit the facing page of the decision together with that page which has that summary at pages 63/64. Subsequent to that decision, there has been the subsequent decision at 5 and 13 Andace Gardens at 3.5% deduction for 69 and 72 years unexpired respectively and in the Barry and Peggy High -v- Zucconi decision 6% deduction for 52.5 years unexpired. It is my opinion that a 5% deduction is appropriate for 60.78 years unexpired but I accept that there is no defined graph or table for the quantum of such deductions. I have noted that the principle of such deductions has been consistently established by the Upper Tribunal decisions on the point.*
- (xi) I have then cross-checked those results against the average of the five published graphs outside Prime central London which gives a relativity figure of 86.46%. The experience of myself and colleagues in my firm is that, in those cases where market evidence is available, the results are, more often than not, reasonably consistent with the Savills' graphs for properties outside the Prime central London area but I accept that that is not always the case.*
- (xii) Paragraph 170 of the Mundy decision anticipated that the Savills' graphs would be employed by valuers and Tribunals in cases such as this where there is no market evidence available. It is submitted that this is guidance; it is not mandatory and First-tier Tribunals have discretion to decide the most appropriate method for a determination of existing lease value for marriage value purposes*

- (xiii) *The Tribunal's attention is also drawn to Barry and Peggy High -v- Zucconi (2019) UKUT 0242 (LC) concerning a flat at 26 Barrydene in Whetstone, London N20. A copy is attached at Pages 65-74.*
- (xiv) *In paragraph 23 of that decision, the Upper Tribunal made a finding that the FTT in that case: were wrong not to have considered the Gerald Eve and Savills graphs as well, solely because the property was not located in prime Central London. In Paragraph 25, the Upper Tribunal records that cases concerning maisonettes in Northfield and Sutton Coldfield that the Savills' 2015 (enfranchisement)[sic] and 2016 (un-enfranchiseable) graphs could be appropriately used in those appeals. In paragraph 26, the Upper Tribunal found that the most reliable method of valuation for a property in White Hart Lane, Tottenham, London N17 was to use Savills' 2015 enfranchiseable graph. In paragraph 27, the Upper Tribunal found that the FTT in that case had not paid proper regard to the more recent Upper Tribunal cases, outside Prime central London, where the Savills' enfranchiseable and un-enfranchiseable graphs had been preferred by the Upper Tribunal to the use of an average of the RICS 2009 graphs.*
- (xv) *In the Upper Tribunal's determination of the High -v- Zucconi case, the Upper Tribunal preferred the evidence of the landlord's valuer which started with the Savills' 2016 and the Gerald Eve 2016 un-enfranchiseable graphs and therefore, to a limited extent, reflected the average of the graphs approach favoured by the FTT in that case. That opinion is outlined in paragraph 7, the relevant part of which reads:*

“The Appellant's' expert Mr. Anthony How, FRICS IRRV, considered the Gerald Eve 2016 graphs (without rights); the Gerald Eve 2016 table of relativities (without rights); the Savills' 2002 graph and table (with rights) and the Savills' graph and table 2016 (both with and without rights)Mr. How recorded as having told the FTT that he had reached a relativity of 74.8% (52.56 unexpired) by deducting 6% for “no Act rights”) from the higher (Gerald Eve) figure in accordance with the approach and examples set out by the Tribunal in Re Sinclair Gardens Investments (Kensington) Limited's appeal (2017) UKUT 0494 (LC)”

(xvi) *In conclusion, it is my expert opinion that the appropriate relative value for the existing lease, unimproved but in repair, is 79.5% of the freehold vacant possession value and that is the basis of my calculation of the sum payable shown and Page 15.*

(xvii) With regard to the previous lease extension of the flat at 153 St, Mary's Road, Mr. Maunder Taylor makes the following submissions:

- *I have not been provided with evidence of this transaction, whether it was agreed inside the Act or outside the Act, whether professional advisers were employed by both parties, how the premium payable was calculated, and whether that calculation and subsequent agreement were in accordance with the usual valuation principles of the Act.*
- *It is submitted that evidence of the transaction must first be produced, proving the figure said to have been paid. Mr. Treliving has informed me that such evidence is available but I have not yet seen it.*
- *It is submitted that the circumstances of how the agreement was reached must then be produced to show both relevance and reliability. I have not been able to make detailed calculations as the respondent in this case has been hospitalised and has not been available for me to make due enquiry. Certainly, I did not advise the respondent in respect of that negotiation. Assuming the flat to be of similar freehold vacant possession value and to have been subject to a similar lease as with the subject property, then it is submitted that the premium paid cannot be reconciled to a calculation pursuant to the Act.*
- *For these reasons, it is submitted that this transaction is irrelevant and therefore details of it are inadmissible. For the sake of good order, and if the Tribunal decides against irrelevance and inadmissibility, it is submitted that the transaction is not reliable for the purposes of determining a premium payable in the subject case for the reason that there is*

no evidence of the parties both acting knowledgeably, prudently and without compulsion (to satisfy the RICS definition of Market Value), which I expect to be confirmed as and when details of the negotiations (with or without professional advice) are delivered.

CONSIDERATION

15. The Tribunal is grateful to the parties for detailed submissions and, in particular, for the agreed statement of facts which significantly limits the issues to be decided.
16. The valuation reports submitted by the expert witnesses differ in approach, content and detail. Subject to the transaction mentioned in the following item, both parties seem to have accepted that there are no transactions that will assist them in forming an opinion and it is necessary to rely on analysis of graphs.
17. The report from Mr. Treliving on behalf of the Applicants relies almost entirely on a transaction in respect of 153 St. Mary's Road (see later) in forming an opinion of the premium to be paid.
18. The report from Mr. Maunder Taylor for the Respondent makes observations on the transaction referred to but also explains in detail his analysis of graphs that he considers to be relevant.
19. Mr. Treliving provides a detailed valuation suggesting a premium of £23,375 whereas Mr. Maunder Taylor's valuation suggests a premium of £32,221.

DECISION

20. The transaction in respect of 153 St. Mary's Road needs to be considered at the outset as it is material to the valuation approach of each expert.
21. Mr. Treliving's views are set out in 12(b) above. In summary, he considers that this transaction provides a rare opportunity of an almost identical property where a lease extension took place at almost exactly the same time as the subject property.
22. The views of Mr. Maunder Taylor are set out in 14 (xvii) above. In summary, he considers that this transaction is irrelevant and therefore details of it are inadmissible.

23. A copy of the document which records the lease extension of 153 St. Mary's Road is included in the bundle. It is described as COUNTERPART/SURRENDER AND LEASE and is dated 19th October 2018. In summary, it provides:
- (a) The existing lease dated 25th June 1981 was surrendered and substituted by a new lease expiring 24th March 2140.
 - (b) The "new rent" is £60 per annum until 24th March 2050, £120 per annum until 24th March 2080 and thereafter £240 per annum for the remainder of the new term.
 - (c) The premium paid was £16,500
24. The Tribunal has come to the conclusion that this transaction is of very limited value and that no weight should be attached to it.
25. The terms of the original lease are not stated, there is no comment on any improvements, the ground rent provisions are not in accordance with the statutory basis, the lease extension was for 60 years rather than 90 years and overall the analysis of the transaction is minimal. Mr. Treliving has adopted the premium paid without any attempt to compare or contrast it with the subject property and does not know whether the premium includes landlord's costs.
26. The report from Mr. Maunder Taylor states that Mr. Treliving can provide evidence of the basis of the transaction – in particular that the parties acted knowledgeably, prudently and without compulsion. However, he has not done so.
27. Mr. Maunder Taylor is of the opinion that the evidence is inadmissible. However, it is perfectly proper for the information to be provided but it is for the Tribunal to attach such weight as it thinks fit to the information supplied by the Applicant.
28. The Tribunal takes the view that the information is of limited value and that assessment of the relevant graphs is the most appropriate method of calculating value in this case.
29. There is another preliminary matter that needs to be considered at this stage.

The Applicants' solicitor sent an email to the Tribunal Office on 5 August 2020 requesting that the "additional information including the decision from the Upper Chamber that post-dates the timetable for this case should be excluded from the bundle". This refers to the case of Deritend Investments (Birkdale) Limited and Ms Kornelia Treskonova (2020) UKUT 0164 (LC)

The Applicants were required by Tribunal Directions to prepare the bundle and are thus entitled to make any amendments. However, it should be noted that the decision referred to is in the public domain and the Tribunal are entitled to have regard to the contents.

30. Having made a decision on the above matters and concluded that analysis of graphs is the most appropriate way of forming an opinion of value in this case, the Tribunal proceeded to consider the information provided on this aspect by the parties.
31. The Tribunal is familiar with the relevant cases and copies of some of them were kindly supplied by Mr. Maunder Taylor. Copies of some of the various indexes and graphs referred to were also supplied.
32. Having dealt above with the submission in respect of 153 St. Mary's Road, we remind ourselves that, given the matters agreed upon, the only matter we need to determine is the value of the existing leasehold interest for marriage value calculation purposes.
33. There is conflict and inconsistency in decisions and guidance in recent years with particular regard to location in Prime Central London.
34. Mr. Treliving has not made any attempt to consider the graphs in detail. In his report under "Evidence of Transactions" he states that he is "*...well aware of decisions in the Upper Tribunal and Graphs of Relativity, but considered the information detailed above and documented by Land registry has far greater relevance. However, if the Tribunal thinks otherwise the Valuer contends that a relativity of 86% is relevant based on average figures from the Published Research of Leading London based estate agents/surveyors and secondly the RICS...*". This information is of limited value to the Tribunal.

35. In contrast, Mr. Maunder Taylor has considered the relevance of the available graphs in detail.
36. In forming his opinion, Mr. Maunder Taylor makes the following points in particular:
- (a) The starting point has been established by the Upper Tribunal (Lands Chamber) in the case of the Trustees of Sloane Stanley Estate -v- Mundy (2016) UKUT 0223 (LC). He draws attention to and comments upon various paragraphs in the report.
 - (b) The decision in the High Foundation -v- Zucconi was for a property in suburban North London, and that subsequent Upper Tribunal decision (discussed later) supported the findings in Mundy.
 - (c) He has considered the Savills' un-enfranchiseable graph as well as the Savills' enfranchiseable graph subject to an adjustment for the rights under the 1993 Act. He has then cross-checked those results against what he considers to be the appropriate graphs originally published in 2009 under the RICS report into relativity.
 - (d) The Savills' un-enfranchiseable graph (from which no further deduction or amendment is necessary) records a relativity for 60.78 years unexpired of 78.82%. The Savills' enfranchiseable graph records a relativity of 83.71% for 60.78 years unexpired from which a deduction must be made for Act rights which is considered in the next paragraph.
 - (e) He has then considered deductions for no act rights and concludes that a 5% deduction is appropriate for 60.78 years unexpired whilst accepting that there is no defined graph or table for the quantum of such deductions.
37. The Tribunal prefers the evidence of Mr. Maunder Taylor which presents a reasoned and substantiated argument. At the end of the day, it is a matter of judgement but Mr. Maunder Taylor has justified his opinion and accepted the limitations of available evidence.
38. In addition to all the above, the Tribunal has considered the case of **DERITEND INVESTMENTS (BIRKDALE) LIMITED -v- MS KORNELIA TRESKONOVA [2020] UKUT 0164 (LC)** which was a decision by the Upper

Tribunal (Lands Chamber) on an appeal from a decision of the First Tier Tribunal. It gives a very clear review of the current position on relativity and then provides strong guidance as to how tribunals should look at non PCL cases in the future.

39. The official summary of the case reads as follows:

“LEASEHOLD ENFRANCHISEMENT – flat – premium for new lease – relativity – Outer London property - whether FTT wrong to average RICS 2009 graphs for Greater London and England and to exclude most recent Prime Central London graphs – whether FTT required to review its decision in light of Upper Tribunal decision which post-dated the hearing – appeal allowed – premium determined at £38,990 - Leasehold Reform, Housing and Urban Development Act 1993”

40. The following relevant observations are extracted from the transcript of this case:

- (i) *The two PCL graphs are still rightly regarded as the most reliable and recent graphs of relativity. They provide objective evidence of relativity, based on a very large data set, and have been revised in light of close scrutiny by the Tribunal in Mundy. They should be considered as a starting point where no, or insufficient, transactional evidence has been submitted by the parties. They are not ideal, particularly for property outside PCL, but for the time being they provide the only treatment of relativity which can be regarded as reliable. Their use is always preferable to the use of an average of the RICS 2009 graphs. [39]*
- (ii) *Three main criticisms can be made of settlements as valuation evidence. First, they are usually evidence only of the price agreed and not of the component parts of that price. Second, they may be affected by the "Delaforce" effect, that is to say the anxiety on the part of the tenant or landlord to reach agreement, even at a figure above or below the proper price, without the stress and expense of tribunal proceedings. Third, they tend to become self-perpetuating and a substitute for proper consideration and valuation in the particular case. [44]*
- (iii) *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. [58]

41. This recent case supports the analysis and opinion of Mr. Maunder Taylor.
42. As a result of the all above findings the tribunal determines that the appropriate relative value for the existing lease is 79.5% and that the proper premium payable for the statutory lease extension in respect of Flat 2, 155 St. Marys Road, Tonbridge, Kent TN9 2NL is £32,139 (Thirty two thousand one hundred and thirty nine pounds). The calculation is annexed to this decision.

Appeals

43. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
44. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
45. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
46. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.