



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

**Case Reference** : CHI/43UB/OLR/2020/0114

**Property** : 8 Regnolruf Court, Church Street, Walton-on Thames, Surry KT12 2QT

**Applicant** : Jade Louise Nash & Kaine Ellis Drury

**Representative** : Robert Kaye MSC MRICS

**Respondent** : Metropolitan Properties Co (FGC) Ltd

**Representative** : Robin Sharp BSc FRICS

**Type of Application** : S.48(1) Leasehold reform Housing and Urban Development Act 1993

**Tribunal Member(s)** : Mr Richard Athow FRICS MIRPM  
Mrs J Coupe FRICS

**Hearing Date** : 18<sup>th</sup> November 2020

**Date of Decision** : 27 November 2020

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**Decision**

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## **Summary of Decision**

The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the lease extension at the property is the sum of **£46,037**

### **Background**

1. This is an application to determine the premium and other terms of the acquisition.
2. Directions were made on 29<sup>th</sup> June 2020 setting out a timetable for the exchange of written submissions on the matters not agreed.
3. The matter was determined by video conference hearing on 18<sup>th</sup> November 2020 and the parties were permitted to call expert evidence.
4. Valuation reports have been received on behalf of both parties. Mr Robert Kaye MSC MRICS, instructed by the Applicant and Mr Robin Sharp B.Sc. FRICS instructed by the Respondents.
5. An inspection of the property has not been made. The Tribunal relied on evidence of the nature and condition of the property from the expert witnesses.
6. The flat is currently held on an occupational lease for a term of 99 years, commencing on 29<sup>th</sup> September 1975. The Respondent owns the reversion to the block.

### **The Premises**

7. Regnolruf Court is a purpose-built block of flats constructed about 1934 and comprises 27 flats over three floors. The block is situated in centre of the town, adjacent to St Mary's Church. The River Thames is less than ¼ mile away.
8. The subject property comprises a purpose built flat on the First floor.

### **The Hearing**

9. The hearing was attended by Mr Kaye and Mr Sharp.
10. The Tribunal noted the apparent dual status of the representatives for the Applicant and Respondent i.e. that they may be advocates and expert witnesses. The Tribunal asked the parties to ensure that they make clear to the Tribunal in what capacity they were speaking at any given time. It was to be assumed that they were addressing the Tribunal as expert witnesses unless told to the contrary.
11. A signed Statement of Agreed Facts and Issues in Dispute was included in the bundle [150] but Mr Kaye objected to this document as it had handwritten commentary which had been added by Mr Sharp after he had signed the document. The notes stated there was a 5<sup>th</sup> item under the "Agreed Facts" heading – No improvements, and a note "Landlord 824 sq ft" added to item C of the Disputed Issues. He had not agreed to either of these items being added to the

Statement and did not accept them. Mr Sharp said he had added them in good faith.

12. The following were agreed between the parties:

- Date of valuation 23rd October 2019
- Lease term 99 years
- Unexpired term at valuation date 54.93 years
- Deferment rate 5%
- Near Freehold value +1%

13. The following are disputed

- The Gross Internal Floor Area (GIA) of the Flat
- Capitalisation rate.
- Freehold Vacant possession of the Flat.
- The existing Leasehold Vacant possession value of the Flat

14. Dealing with those issues:

#### Gross Internal Floor Area (GIA)

15. Mr Kaye did not agree the floor area of 824 sq ft as given by Mr Sharp. Mr Kaye stated the floor area as 821 sq ft.

16. The Tribunal asked both Surveyors if they could agree a floor area as they were only 3 sq ft apart. Mr Sharp suggested they split the difference, but Mr Kaye would not accept this proposal.

17. The Tribunal told the surveyors this was not an acceptable situation and adjourned the Hearing so that the surveyors could settle their differences.

18. Upon the resumption of the Hearing the surveyors confirmed they had reached an amicable agreement that the GIA floor area was 822.5 sq ft.

#### Capitalisation Rate

19. Mr Kaye gave evidence of 6 blocks of flats which had been sold between December 2018 and July 2019. He had computed the Explicit Capitalisation Rates to be between 7.4 and 10.0%. These sales were of blocks with rising ground rents but low annual payments, similar to the subject case. From this he adopted a rate of 8% as being appropriate in this case.

20. Mr Kaye accepted that the GIY on 220 Earlsfield Road was the only comparable near to the subject property, the remainder being in more outlying towns. The GIY was 3.6% because of the higher reversionary values of the flats.
21. Mr Sharp was of the opinion that 6.0% was an appropriate rate. Interest rates are at an historic low and the income from ground rents is secure and risk of non-payment is low.
22. He accepted there was a range of rates which could affect the valuation, but these were usually between 5.0 and 6.5%. Consequently, Mr Kaye's figure was outside this range and should not be considered as accurate in this instance.

#### Freehold Vacant Possession Value

23. Both surveyors agreed that 1% was the appropriate uplift from Long Leasehold Value to the notional freehold value.

#### Long Lease Value

24. To enable him to arrive at the long leasehold value of the flat, Mr Kaye prepared a schedule of recent sales in the block [Appendix 8, p179]. He discounted the sale of Flat 23 because it was only one bedroom and therefore not comparable. He then considered the sales of Flats 25 (sold June 2017), 16 (2<sup>nd</sup> May 2017) and 27 (30<sup>th</sup> January 2020), which he adjusted by the agreed 1% for the non-statutory lease extension. He made further adjustments for time, position and condition. He used the floor areas shown in the EPC's of the flats as his reference point for arriving at the floor area of each flat. From these he reached a figure which computed to an average rate per square foot of £349.00, which returned a Long Lease Value of £286,898 and a Freehold Vacant Possession Value of £289,796. Although this figure was considerably higher than any other sale in the block, he felt it was justified because the flat was larger and had a balcony.
25. Mr Sharp had looked for more recent evidence as he felt that the sales from 2017 were too far away in time. Other flats have come onto the market in recent times. Flat 13, but it is small; Flat 25 was recently on the market for £275,000 but has now been rented out; Flat 21 came onto the market in September 2019 but he does not know that it has been sold. It is a ground floor flat of 644 square feet and it may be on different lease terms as it has 116 years unexpired on its lease.
26. This left the sale of Flat 27 which sold for £250,000 in January 2020. He used the Land Registry Index for flats and maisonettes for Elmbridge (the local authority district) which gave an adjusted value of £253,670. He used the floor area stated in the agent's sales brochure to arrive at a rate per square foot of £359.30. This flat is on the second floor and thus has an extra flight of stairs. He felt the subject flat was better situated – one floor lower, had a balcony and was noticeably larger by 118 square feet. Using the £349.30 for the same floor area as Flat 27 (706 sq ft) and  $\frac{3}{4}$  of that rate for the additional floor area, together with an assumed value of £15,000 for the benefit of the balcony, he computed the Extended Lease Value to be £300,491. Bearing in mind that the floor area had not been agreed before the hearing and accepting that valuing on a floor area basis is not precise, he reviewed the figure downwards by 2.25% to £293,370 as a contingency. This gave a FHVP value of £296,730.

## Relativity

27. Mr Kaye had approached this with two methods to give him a cross-check: comparable evidence and Relativity Graphs. He took guidance from ***Sloane Stanley v Mundy [2016] UKUT 0223 (LC)*** and firstly considered comparable sales evidence close to the Valuation Date. There were no sales around that date, but Flat 3 was sold in December 2017 and the subject flat had been sold in July 2017. This method was not without its problems as flats are often of different sizes, layouts and locations. As a consequence, many subjective adjustments are often required.
28. The properties considered under the comparable approach were five flats in the block, but one was immediately discounted as it was only 1 bedroomed. This left flats 25, 16 and 27. Whilst they were similar in style and layout, they appeared to be of differing sizes, when comparing the floor areas. He used the floor areas as stated in the EPC's he had obtained for the sake of consistency. Only the subject flat had its own balcony, so he made an adjustment of £10,00 for this together with a further £5,000 for condition and its position in the block.
29. He produced a table of adjustments for each flat [179] and reached a conclusion that the average rate was £275/sq ft. By utilising this and then adjusting for time based on the Land Registry Surrey County index he reached the valuation for Flat 3.
30. Mr Kaye followed the precedent from ***Sloane Stanley v Mundy***. By using the "myleasehold" list of graphs and selecting the Savills Enfranchiseable graph of 80.84% and deducting 6.17% for Act Rights which gives a Relativity of 75.85% this adjusted the value from £289,796 to £219,810.
31. He accepted that there was a potential for errors on the comparable method and so decided that an average of the comparables and the graphs methods would be appropriate. This gave a Relativity of 73.97%.
32. Mr Kaye had given consideration to ***Deritend Investments (Birkdale)Ltd v Treskonova [2020] UKUT 164 (LC)***. (***Deritend***) where the Upper Chamber had made its decision based on the graphs alone. In that case it decided an appropriate rate for a flat with 55.95 years remaining was 75.4%. This was close in term remaining and Relativity and supported his case.
33. Mr Sharp approached his valuation in much the same way, starting with reliable market evidence. He could find no better evidence than the sale of the subject flat in July 2017 when it achieved £212,500 with 57.2 years unexpired. When indexed for time the value computes to £213,760 and then further adjusted to take in to account the reduced lease term resulted in a value of £211,312.
34. Some work has been carried out to the flat, but he contended it was a matter of style and taste. He did however make an upward adjustment of 3.5% for this.
35. This resulted in a value of £218,710 for existing lease value inclusive of rights.

36. Mr Sharp considered the *Mundy* decision and assessed the rights at 10%. He acknowledged that not all Tribunals agreed with his view, but some have, citing 10H Arlington House.
37. Thus, by reducing the figure of £218,710 by 10% for the 1993 Act Rights he assessed the value at £196,839. This gives a Relativity of 66.34%.
38. He also considered *Mallory v Orchidbase [2016] UKUT 468 (LC)* and *Reiss v Ironhawk[2018] UKUT 0311 (LC)* but both had issues that made the valuations not wholly reliable.
39. Deritend endorsed the use of PCL graphs when dealing with properties outside PCL and gave guidance that the Savills and Gerald Eve 2016 graphs were considered to be the most reliable where there was no reliable transaction evidence.
40. However, he felt that the Beckett & Kay graph was based on suburban evidence, rather than the other two which were based on PCL. The B&K graph showed 66% as the appropriate rate in this instance, whereas the Savills graph indicates 80.84% inclusive and 74.64% exclusive of Act Rights, whilst the Gerald Eve graph shows 74.42%.
41. Mr Sharp was of the opinion that the Act is more valuable outside PCL because the preservation of value by reference to the Act is vital in the suburbs. These are not the “trophy buildings” found in PCL. As a result, he would expect a lower Relativity in Walton-on-Thames once the Act is removed. Savills effect is 7.67%.
42. His opinion of the Upper Tribunal’s decision not to place much emphasis on Beckett & Kay was because no market evidence was allowed. He cited the level of Relativity as used by the Tribunal in Bishopric Horsham.
43. Taking all of this into account Mr Sharp concluded the appropriate Relativity in this instance was 66.34%.

#### Professional Costs

44. Mr Kaye had deducted £4,000 from the Marriage Value calculation as he felt that without doing so it would overstate the value. In particular, this would be more apparent at the lower end of the market. He felt that this sum was modest to reflect the No Act Rights assumption, and thus it envisages the costs for a non-statutory lease extension.
45. Mr Sharp felt this was not an item to be considered in the valuation.

#### Determination

##### Gross internal Floor Area

46. As the two surveyors have now agreed the Gross Internal Floor Area at 822.5 sq ft the Tribunal will not need to consider this.

## Capitalisation Rate

47. In respect of the Capitalisation Rate the Tribunal accept Mr Sharp's evidence that it should be in the range of 5.0 and 6.5% - his opinion was it should be 6%. Mr Kaye did not provide sufficient evidence to consider his proposed rate of 8% appropriate.
48. The Tribunal agrees with Mr Sharp's submission that Mr Kaye's figure of 8% is too high, but also Mr Sharp's figure is too low because of the low ground rents payable under the lease. It decides that another 0.5% should be added to take this into account for an otherwise secure investment. The Capitalisation rate is 6.5%

## Long Leasehold Value

49. The Tribunal considered the valuations submitted by the two surveyors and noted that the valuations were very close to one another (about 2% difference) but the surveyors had been unable to reach common ground, or compromise. This is a similar situation to that in respect of the floor areas. The Tribunal considers that the surveyors should have discussed this before the hearing and should have reached an agreement to meet half-way. This gives a value of 290,314. As the surveyors were not able to do this, the Tribunal finds this to be the appropriate way to value the Flat's long Leasehold Value, and concluded a value of 290,314 was appropriate, which the Tribunal rounded to £290,000.

## Relativity

50. Relativity is a subject that is frequently reviewed at the Upper Tribunal and there have been several cases in recent years, the latest being the **Deritend** case. In its decision the Upper Tribunal gave guidance for Tribunals at paragraph 58 as follows;

*“The guidance given by this Tribunal endorse the use of Savills and Gerald Eve 2016 graphs where there is no transactional evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggest that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by PCL graphs.”*

51. It also stated that the Beckett & Kay graph was not considered to be reliable because it did not sit well when compared to the other graphs, in particular the 2016 graphs.
52. Because of this, this Tribunal is required to follow the Upper Tribunal's advice unless there is good reason to move away from it. No compelling evidence was heard that would give us reason to consider the Beckett & Kay graph, so it remains for the Tribunal to consider an appropriate rate.
53. The figure of 66.34% proposed by Mr Sharp from the Beckett & Kay graph does not come close to any of those in the graph at paragraph 54 of the Deritend decision, and the Tribunal considers that this figure is unreliable.

54. Mr Kaye's figure of 73.97% was arrived at by comparing various other flat sales in the block at varying times. Many assumptions had been made. He acknowledged this in his submissions. There were several aspects which were not verified as far as accuracy is concerned. The floor areas were based on those from EPC certificates. Various sums were added or deducted during the computations, but there was no verification of the sums, especially when it came to adjustments for balconies, positions of the various flats in the building.
55. Mr Kaye stated the ground floor flat was less valuable because it had no balcony and therefore reduced its value. He made no observation on the potentially substantial demand for this ground floor flat by elderly, infirm or people confined to a wheelchair. For these people a ground floor flat would be a major attraction in this block as there is no lift to assist them in gaining access to the flats on the upper levels.
56. The Tribunal prefers Mr Kaye's figure, but has reservations as to its accuracy. Having reviewed the Savills and the Gerald Eve graphs it decides the appropriate Relativity is 74.53%

#### Professional Costs

57. The Tribunal heard a novel argument on this topic which has not been put before them before. It was not convinced of its value. In particular, when considering the RICS guidance note "Leasehold Reform in England and Wales" 3<sup>rd</sup> Edition (August 2015) specifically states in the last line of each of the example valuations in the Annex "New Lease premium (excluding costs).
58. Consequently, this Tribunal does not accept them as an item to be taken into account in deciding the premium.
59. For those reasons the Tribunal determines the premium payable is £46,037.



## APPENDIX 1

8 Regnolruf Court, Church Street, Walton on Thames, Surrey, KT12 2QT

### 1. Diminution in value of freehold interest

#### (i) Capitalisation of ground rent

Ground rent term 1:		£30.00	
YP 21.93 years @	6.5%	11.5182	£346
Ground rent term 2:		£60.00	
YP 33 years, deferred 21.93 years	6.5%	3.3825	£203

#### (ii) Freehold reversion

Unencumbered FHVP value		£292,929	
PV £1 in 54.93 years @	5%	0.0686	<u>£20,095</u>

**CURRENT VALUE OF FREEHOLD INTEREST** £20,644

#### (iii) Less interest after extension

Unencumbered FHVP value		£292,929	
PV £1 in 144.93 years @	5%	0.00085	<u>-£249</u>

**DIMINUTION IN FREEHOLD INTEREST** £20,395

### 2. Marriage value

#### (i) Combined value of interests after extension

Freehold		£249	
Leasehold		<u>£290,000</u>	£290,249

#### (ii) Less combined value of current interests

Freehold		£20,644	
Leasehold @ relativity	74.53%	<u>£218,320</u>	<u>£238,964</u>

**MARRIAGE VALUE** £51,285

Landlord's share @

50%

£25,642

**PREMIUM PAYABLE**

**£46,037**

## **Appeals**

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.

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.

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 time or not to allow the application for permission to appeal to proceed.

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.