



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

Case Reference : **LON/00AD/OLR/2020/0428 - V:CVP**

Property : **45 COLUMBUS SQUARE, ERITH, DA8
2PN**

Applicant : **IHUNDA CHIKA AMADI**

Representative : **Stone Rowe Brewer LLP**

Respondent : **SINCLAIR GARDENS INVESTMENTS
(KENSINGTON) LIMITED**

Representative : **PDC Law**

**Type of
Application** : **93 Act New Lease of Flat**

**Tribunal
member(s)** : **Judge Sheftel
Mr Richard Waterhouse BSc MA LLM
FRICS**

Date of Decision : **27 May 2022**

DECISION

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Background

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) for a determination of the premium to be paid and the terms for a new lease.
2. The application relates to 45 Columbus Square, Frobisher Road, Erith DA8 2PN (the “Property”). 45 Columbus Square is a 2-bedroom first flat in a purpose-built block, together with a parking space. It is located

within a 3-storey block in a large residential estate in Erith, built in the late 1980s.

3. The Property is let pursuant to a lease dated 6 June 1989 for a term of 99 years commencing 1 September 1987.
4. The Applicant served a Section 42 Notice of Claim dated 2 September 2019, proposing a premium for a lease extension of £6,470. The Respondent served a Counter-Notice dated 30 October 2019, proposing a premium of £22,586.
5. The hearing of this application took place on 10 May 2022. The Applicant, tenant, was represented by Mr Sumit Gupta B.Com MBA AssocRICS, who also provided expert evidence. The Respondent, landlord, was represented by Mr GP Holden FRICS who had provided an expert report.
6. The parties had provided a bundle in advance of the hearing. However, on the evening prior to the hearing the Respondent sought permission to adduce additional evidence in the form of some further comparable sales of properties in the locality. The Applicant did not oppose the admission of such evidence. Further, Mr Gupta also produced an additional page which had apparently been omitted from the exhibits to his report. Again, there was no objection to this being included with the evidence.

Valuation

7. The following matters have been agreed between the parties:
 - (1) Valuation date: 5 September 2019
 - (2) Unexpired Term: 66.99 years
 - (3) Ground rent: £85 per annum for the first 33 years of the term rising to £170 per annum for the next 33 years of the term rising to £225 per annum for the remainder of the term. There was a very slight difference between the valuers as to capitalisation of ground rent, so we have taken a point between the two figures. This does not affect the ultimate calculation.
 - (4) Deferment Rate: 5%
 - (5) Capitalisation Rate: 6.5%
 - (6) Long lease value £190,000

- (7) 1% differential between the unimproved extended lease value and the unimproved freehold vacant possession.
 - (8) FHVP: £191,919
8. The only issue that remained in dispute was relativity:
- (1) The Applicant suggested a figure for relativity of 90.5%. This produced a premium of £13,170.
 - (2) In contrast, the Respondent adopted a figure of 82.86%. This produced a premium of £20,412.

The Applicant's evidence

9. Mr Gupta considered that there was limited evidence of short leasehold sale transactions for 2-bedroom flats. He made brief reference to the sale of 30 Columbus Square, sold on 25 April 2019 for £145,000 with a lease of approximately 67 years. However, he discounted this as a reliable comparator on the basis that it was sold with limited marketing and also stated that he was informed by the auctioneer that the seller was desperate to sell.
10. Instead, the Applicant sought to ascertain relativity by reference to sales of 1-bedroom flats on the estate. Reference was made to four long leasehold sales at an average price of £150,500 and five short leasehold sales at an average price of £136,200. Comparing the two averages produced a relativity of 90.5%. It was asserted that this was in line with the 2009 RICS graph and just below the South East Leasehold graph.
11. Mr Gupta appeared to acknowledge the necessity for a deduction for 1993 Act rights. However, he did not make such deduction given that the result approximated to the two graphs referred to above. Further, as pointed out on behalf of the Respondent, the Applicant's valuation did not make a 1% adjustment to convert the extended lease value to freehold value with vacant possession.
12. More generally, the Respondent submitted that as a matter of principle, attempting to ascertain relativity in the context of a 2-bed flat could not be done by looking at market evidence of transactions in relation to 1-bed flats as it was not comparing like for like. Mr Holden contended that the markets for 1-bed and 2-bed flats are very different and that there

was no evidence of how many 1-bed and 2-bed flats are in Erith, noting that relativity is impacted by supply and demand.

13. The Respondent also criticised the selection of long leasehold comparables chosen by the Applicant in that they failed to include another five sales of 1-bed long leasehold flats on the development, all of which were for a higher price and therefore would have significantly have increased the average long leasehold sale value. These were:
 - (1) 38 Columbus Square – £160,000;
 - (2) 42 Cook Square – £170,000;
 - (3) 196 Frobisher road - £164,000;
 - (4) 17 Columbus Square - £162,000;
 - (5) 100 Frobisher Road – £165,000.
14. In response, it was suggested on behalf of the Applicant that many of these additional comparables were larger properties and therefore should be discounted.
15. Finally, it should be noted that although the calculation contained no adjustment for time (between the date of sales and the relevant date), the Applicant had produced the House Price Index for Kent which showed only a 1% difference for sales of flats between August 2019 and February 2022.

The Respondent's evidence

16. The Respondent also sought to look for comparables, although again considered that there was little evidence of short lease sales of 2-bed flats. Mr Holden identified the sale of 126 Frobisher Road in his report, although dismissed it as a comparable on the basis that it was a sale between connected persons and therefore it could not be confirmed that it was a sale at market value.
17. Ultimately, Mr Holden considered that the only potentially reliable comparator was the auction sale of 30 Columbus Square as this involved a sale on the open market. However, he did not consider that relativity could properly be ascertained on the basis of a single sale – and indeed did not dispute Mr Gupta's suggestion at the hearing that this may have been a distressed sale in any event.

18. The Respondent, therefore, sought to fall back on the relativity graphs and, as a consequence, arrived at the figure of 82.86%, being the average of the two Savills (2016) and Gerald Eve (2016) graphs in accordance with the Upper Tribunal guidance in *Deritend Investments (Birkdale) Limited v Treskonova* [2020] UKUT 0164 (LC).

Discussion

19. Starting with the transactional evidence, while it was common ground that transactional evidence should be used where it exists, both parties had agreed that there was little evidence of short-lease sales of 2-bed properties.
20. It should be noted that during the hearing, Mr Gupta also made reference to the short leasehold sale of 10 Columbus Square for £173,000 in October 2021. However, this had not been referred to in either valuer's report (it appears to have post-dated Mr Holden's report) and the tribunal had no further information about this flat, such as its size or condition. Indeed, the suggestion that it was a short lease sale was only derived from the schedule of leases in an Official Copy printout from 21 January 2019. As a result, we do not consider that it can provide useful evidence to determine relativity. We therefore conclude that there is not sufficient market evidence of sales of 2-bed flats to determine relativity.
21. As noted above, Mr Holden's submission was, therefore, that it was necessary to fall back on the graphs of relativity.
22. On the question of which graphs should be applied, the Upper Tribunal in *Deritend Investments (Birkdale) Ltd v Treskonova* [2020] UKUT 0164 (LC) endorsed 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 prime central London:

“39. 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.

40. A major criticism of the RICS 2009 graphs is that they overstate relativity in post financial crisis markets. Of the five component graphs averaged by the FTT

only the Beckett and Kay mortgage dependent graph has been updated to take account of the very different circumstances which existed after 2009. The 2017 version of the Beckett and Kay graph places relativity at 55 years at 67%, compared with 79% in the 2009 graph. Where the authors themselves no longer consider their original graph reflects current relativity it is not possible to justify its continued use, which is what the FTT did in this case. Even if the current version had been substituted in calculating the average, the overall effect of the other four graphs would produce a result predominantly based on historic data.

41. The data in the RICS 2009 graphs is not only historic, but suffers variously from limitations of scale and source. The 2009 Beckett and Kay graph used opinion data, with no defined geographical area other than non-PCL. The South East Leasehold graph used analysis from 1997 of transaction data for flats in Bromley and Beckenham. The Nesbitt and Co graph used evidence of some 250 settlements and LVT decisions, for predominantly flats, between 1995 and 2008 in Greater London and a proportion of provincial towns. The Austin Gray graph used a mix of pre and post 1993 transactions, settlements and LVT decisions for some 250 flats, predominantly in Brighton and Hove. The Andrew Pridell Associates graph used a mix of opinion, settlements, transactions and LVT and Tribunal decisions for 500 flats in the south east and suburban London.

...

58. 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.”

23. As set out in Mr Holden’s report, using the average of the Savills 2016 (82.70%) and Gerald Eve 2016 (83.03%) graphs, based on the Upper Tribunal guidance as set out above, produces a figure for relativity of 82.86%.
24. However, that is not the end of the matter as it is necessary to consider the Applicant’s alternative approach of determining relativity by reference to sales of 1-bed flats. In the Applicant’s submission, this was relevant transactional evidence.
25. Before considering whether sales of 1-bed flats can be relied on as a matter of principle, as a starting point, we agree with the Respondent that, there are difficulties with the Applicant’s calculation in any event:
 - (1) An adjustment would need to be made for 1993 Act rights. Mr Gupta’s own evidence was that such adjustment would typically be in the range of “2.5-5% for a 60 years plus lease”. This accords with Mr Holden’s figure of 4.17%, based on the Saville 2015 enfranchiseable and unenfranchiseable graphs. We therefore adopt

the figure of 4.17% as an appropriate adjustment for 1993 Act rights.

- (2) An 1% adjustment should be made to convert extended lease value to freehold value.
26. Although the Applicant's calculation producing a relativity of 90.5% did not make either adjustment, Mr Gupta had been fortified in his conclusion as the result had accorded with the 2009 RICS and South East graphs. However, as set out above, the clear guidance from the Upper Tribunal is that these graphs are not to be preferred and, in any event, the correlation no longer holds when the above adjustments are made.
27. That link is broken even further if some or all of the additional comparables produced by the Respondent are included in the calculation, as this would increase the average price for long leasehold sales and therefore alter the final figure.
28. On the question of whether those additional comparables should be included in the calculation, Mr Gupta contended that several of the sales referred to in the additional evidence bundle were of flats of a larger floor area than the examples the Applicant had relied on. This was disputed by Mr Holden who questioned the accuracy of the EPC evidence, but in any event also maintained that all of the 1-bedroom flats on the estate were 'much of a muchness'. While the tribunal can only go off the evidence before it, we are also conscious that Mr Gupta's earlier evidence had been that there was no need to make any adjustment for sale prices of 1-bed flats on the development based on what floor they were located on or the fact that some 1-bed flats on the development had their own entrances whereas others did not. He also accepted that he had not inspected any of the comparables he had put forward and so could not give evidence as to the styles of the flats or their condition other than from sales particulars. We are therefore doubtful that the additional comparables should be excluded in their entirety.
29. In any event, two of the additional comparables advanced by Mr Holden (38 Columbus Square and 13 Columbus Square) were of broadly similar floor area to the other comparables proffered by Mr Gupta. Including these two in the calculation (and making the adjustments in paragraph

25 above) produces a relativity of 83.96%, which is much closer to Mr Holden's figure of 82.86%¹.

30. Further, if Mr Holden's evidence is correct that all 1-bedroom flats on the development are 'much of a muchness', notwithstanding different styles and, possibly, different sizes, including all five of the Respondent's additional comparables in the calculation (and making the adjustments in paragraph 25 above) produces a figure of 81.7%², which is in fact lower than the Respondent's suggested figure for relativity.
31. Finally, we note Mr Holden's caution as to the notion of using market evidence of 1-bed flat transactions in determining of relativity in relation to sales of 2-bed flats and in particular, his assertion that the two markets are wholly separate. On the other hand, it is also the case that the relativity graphs do not differ depending on the type of property in question. We also readily acknowledge the limitations of the graphs. In the favour of the graphs the size of the cohort of transactions that inform them is significant and by virtue of this, they afford a degree of statistical validation that smaller samples cannot.
32. On the facts of the present case, whether or not it is appropriate to rely on transactional evidence of sales of 1-bed flats as suggested, after making necessary adjustments to the calculation as set out above and having regard to additional comparables referred by the Respondent, we find that the transactional evidence is in fact consistent with the result produced by the graphs in any event.
33. Accordingly, we accept Mr Holden's figure of 82.86% for relativity. We therefore determine the premium payable to be **£20,410** as set out in the attached appendix showing the tribunal's calculations.

Conclusion

34. **For the reasons set out above, we determine the premium payable to be £20,410.**

Name: Judge Sheftel

Date: 27 May 2022

¹ £130,520.46 ÷ £155,540 (average s/l value as adjusted divided by average l/l value as adjusted)

² £130,520.46 ÷ £159,692 (average s/l value as adjusted divided by average l/l value as adjusted)

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).

Appendix

45 Columbus Square, Erith, Kent DA8 2PN

Facts and matters agreed and determined:

Valuation date:	5/9/19
Capitalisation Rate:	6.5%
Marriage value:	50%
Deferment rate:	5%
Uplift to freehold value	1%
FHVP	£191,919
Lease term:	99 years from 1/9/87
Unexpired Term:	66.99 years
Relativity:	82.86%%
Capitalisation of ground rent:	£2,632

Calculation of premium:

Diminution in value of Landlord's interest:

Existing interest:		
Capitalisation of Ground Rent:		2,632
Reversion to Freehold	191919	
Deferred 66.99 years at 5%	0.0381	7305
Proposed interest:		
Reversion to Freehold	191,919	
PV of £1 in 66.99 yrs @ 5%	0.0005	90
Total diminution in landlord's interest:		9,847

Calculation of Marriage Value:

Proposed interests:		
Landlord	90	
Lessee	190,000	190,090
Less Existing interests:		
Landlord:	9,938	
Lessee (191,919 x 82.86%):	159,024	168,962
Total Marriage Value:		21,128
Attributable to Landlord @ 50%		10,564

Total Premium payable:

£20,411
Say £20,410