



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

Case Reference : CHI/29UN/OLR/2022/0055

Property : 7B Arlington House, All Saints Avenue,
Margate, CT9 1XR

Applicant : Magdalena Regina Katarzyna Korczak

Representative : -

Respondent : Thanet District Council

Representative : Wallace LLP

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

Tribunal members : W H Gater FRICS (Chair)
Judge W M Tildesley OBE

Date of Hearing : 21 September 2022

Date of Decision : 9 November 2022

Decision

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 **£19,330** to be apportioned between the freeholder and head lessee as shown below.

Background

1. This is an application to determine the premium to be paid under the Act.
2. Directions were made on 12 July 2022 setting out a timetable for the exchange of written submissions on the matters not agreed and the parties were permitted to call expert evidence.
3. The bundle submitted contained expert reports from Mr Wilson Dunsin, FRICS instructed by the Applicant and Mr Robin Delworth Sharp B.Sc. FRICS instructed by the Respondents.
4. The Tribunal notes that the Head Lessee, Metropolitan Property Realizations Limited is not joined as a second respondent and that no notices of separate representation have been served. Accordingly, the Tribunal is satisfied that the Freeholder is the competent landlord under the Act.
5. The hearing was conducted by video conference on 21 September 2022 .
6. Mr Dunsin and Mr Sharp attended. The Applicant Ms Korczak and Miss Kenton from the Respondent were present as observers.
7. The Tribunal directed the experts to make clear when they were giving evidence as an expert and, where appropriate, when they were acting as an advocate.
8. The Experts helpfully produced a statement of agreed facts which also set out the matters in dispute. The Tribunal confirmed at the hearing that the disputed issues were
 - The Value of the long leasehold (unimproved) interest.
 - Relativity of the current leasehold interest to the reversion.
 - Relativity of the head Lessee 85 year reversion interest to the Freehold.
 - The statutory lease premium.
9. The form of the new lease has been agreed.
10. 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.

Findings of fact

11. Arlington House is a 1960's tower block, occupying a prominent position on Margate seafront. There are 142 flats over 18 floors.
12. The block was built as part of a larger development which includes Arlington Square, comprising shops and a large multi-storey car park. The property stands close to the Dreamland Amusement complex.
13. The subject property comprises a purpose built flat on the 7th floor, on the eastern, Dreamland side of the development. It has two bedrooms, one bathroom and a kitchen. The gross internal area is 566 sq. ft. The flat is heated by electric heaters.
14. The block is in need of repair and modernisation. A ten year maintenance plan issued in 2020 indicates an estimated £2.9m is required to be spent on the property recoverable through the service charge. Both experts are of the opinion that there are no improvements to be disregarded in the statutory valuation.
15. The flat is currently held by the Applicant on an occupational lease for a term of 114 years, commencing on 1 October 1961. There are 54.10 years remaining on that lease. The current ground rent of £40 p.a. rises to £80 p.a. on 25 March 2047.
16. The Respondent, Thanet District Council is the freeholder and competent landlord for the purposes of the Act. There is an intermediary or head lease from 1 October 1961 for a term of 199 years owned by the Metropolitan Realizations Limited. At the end of the Applicant's occupational lease there will be 85 years remaining on the head lease.

Evidence

Long leasehold values.

The Applicant

17. Mr Dunsin considers that the sale of 10H Arlington house on 28 July 2022 for £172,500 was the best comparable. The lease there was extended in 2019. He adjusts this price by deducting 7.5% for better condition, 3.75% at a rate of 1.25% per floor for different floor level, and 12% for a potential 3rd bedroom, additional sea view and bigger size. After adjusting further by reference to house price index he arrives at an adjusted value of £116,332 at the valuation date.
18. He rejects the sale prices of 4H in March 2017 and 10H in 2017 as being too out of date.
19. Asked by Mr Sharpe whether the 12% adjustment for potential was double counting Mr Dustin replied that the makeup of that figure was correct for the range of factors considered.
20. He also considered that the Section 20 notice for service charge repairs to the block were already factored in to sale prices.

21. Mr Dunsin agreed in questioning that the sale price of flat 10H was not known at the valuation date but that it was still appropriate to consider this post valuation date evidence.

The Respondent

22. Mr Sharp referred to the sale of flat 18H which sold for £170,000 in November 2017. Indexation gives a value at the relevant date of £186,210.

23. He adjusted this by 7.5% to reflect that it had been refurbished, but no more, as the valuation must assume the subject property is in lease worthy condition. This gave an adjusted value of £172,240.

24. Mr Sharp adjusted further for floor level. He did this by simply dividing the difference between the sale price of £115,000 for Flat 4H in March 2017 and the adjusted price of flat 18H by the number of floors. This gave a further adjusted value of £141,864-£141,869.

25. He further reduces this figure to reflect difference in size, proximity to the sea and to partially reject the floor level equal adjustment method.

26. This gave him a valuation of £135,000 at the valuation date.

27. Questioned by Mr Dunsin, Mr Sharp stated that he had adjusted 18H by 7.5% as it had been newly refurbished for sale. 10H has not been refurbished since 2016/7.

28. Asked by the Tribunal whether there was a difference between type H and B flats Mr Sharp pointed out that they had the similar footprint but differ in size, as type B have a corner section missing. Type B are 566 square feet in area, Type H are 600 square ft.

29. In answer to questions, he said that he placed equal weight on 18H and 4H.

30. Asked whether the 2017 comparables were out of date he stated that whilst they had become less reliable, that was what was available at the valuation date. He would not ignore the sale of 10H but the earlier sales would have informed the purchasers. His analysis of 10H would not use such large adjustments as Mr Dunsin.

31. In terms of deduction for floor level he stated that the closer properties came to Dreamland, the greater the adjustment might be.

Adjustment to Long Leasehold Value to reflect Freehold Vacant Possession value: FHVP

32. Both experts agree that the adjustment should be 1%, expressed in the calculation as $100/99 \times$ the Long Leasehold Value.

Existing Lease Value

33. Both experts set out the case law guidance on case law on short leases and there is broad agreement that if there is a reliable pool of sales evidence of short lease, this should be preferred over graphs of relativity.

Mr Dunsin

34. Mr Dunsin rejects the sale price of the subject property for £73,500 on 1 September 2021 as evidence because the property was sold in poor condition at a discounted price. The use of this comparable would require subjective adjustments which can render the evidence less reliable.
35. He examines the sale of flat 5B Arlington House at £80,000 on 23 March 2020. Adjusting by 2.5% per floor for the two floors difference and applying indexation for the different date, he arrives at a figure of £94,396. From this he deducts 7.85% to exclude the Act Rights, using the Savills value of Act rights graph. He cites use of this method in Mundy.
36. The resultant figure of £86,949 is 74% of the sale price of 5B. The approved relativity graphs show a relativity of 74% and he adopts this figure as the value of the existing lease.
37. Questioned by Mr Sharp, Mr Dunsin confirmed that he had made no adjustment for the different dates between the sale of 5B and the valuation date as he considered that the market would not make such an adjustment.
38. Asked why he reported that the condition of 7B was poor when photographs in the bundle did not show this, he said that carpets and décor were old, and the shower was dated. Compared to 10H there were significant differences in condition.

Mr Sharp

39. Mr Sharp examined the sale of flat 7B at £73,500. Deducting 7.84% for Act rights using the recognised graph the adjusted figure was £67,738. Checking this against the Graphs approved in Mundy, the relativity of 49.68% was at variance with the graph at 73.92%.
40. Accordingly, he too examined the sale of flat 5B sold in March 2020. Adjusted for time, floor level and Act Rights this gives value of £91,470 and a relativity of 67.08%.
41. To temper the results, he adopted an average of 49.68% and 67.08% to arrive at 58.38%.
42. He then averaged the 58.38% with the 73.92% average from the approved graphs and arrived at a relativity of 66.15%.
43. Applied to the FHVP of £136,363 this gives a short lease value of £90,204.

Relativity Head Lease

44. Both valuers agree that the appropriate discount rate for the deferral of the headlease reversion is 5.5% and that the term remaining will be 85 years.

45. Both adopt the graphs of relativity. Mr Dunsin uses 91.7% relativity based on the Savills enfranchisable graph alone. Mr Sharp adopts 92.25% being the average of the two approved graphs.
46. Summing up Mr Dunsin invited the Tribunal to focus on the current sale comparable and ignore the 2017 evidence which was out of date. He was confident that the adjustments he made to support the premium calculation were correct.
47. Mr Sharp in closing said that the recent sale of 10H was not available at the date of the valuation and should be discounted. The impending repairs payable through the service charge have a significant effect on the value of the short lease.

48. The Tribunal records it's thanks to the two experts who have invested a great deal of time in analysing the evidence and caselaw in presenting their cases. A considerable amount has been prior agreed and there are two elements of the premium calculation remaining which need to be determined, the unimproved value of the long leasehold interest and the value of the short lease disregarding Act rights.

Long leasehold Value Unimproved.

49. The paucity of market evidence is a significant hindrance to determining the value of this interest. The Tribunal notes the methodology adopted by the experts in extrapolating and analysing sales evidence. Whilst it finds difficulty in accepting the bases in their entirety, for such things as adjustments for floor level and contingency figures plus or minus, we do appreciate the discussion which is of assistance. There is an element of subjectivity and mathematics in an imperfect sales world.
50. Mr Sharp relies on evidence from 2017 whilst Mr Dunsin focusses on the recent sale of one flat. Where evidence is scarce it is appropriate for the Tribunal to reflect on a post valuation date sale in considering value. Whilst the sale of 10H is after the valuation date it is an indicator of the market at Arlington House. Indexation of the sale prices in 2017 is a useful check but the transactions are becoming dated. Any subjective adjustments are amplified by indexation.
51. The Tribunal finds that there is an element of over adjustment in Mr Dunsin's sale analysis of the sale of 10H. 12% is a significant adjustment for the factors noted and there may be an element of double counting in adjusting for larger size and potential third bedroom. This has resulted in a valuation of £116,332 which appears on the low side. A more modest adjustment of 5% would give a comparative value of £124,350.
52. Mr Sharp's reliance on indexation of sale prices from 2017 covers a lengthy period and assumes that flat 7B enjoys average growth in value across a lengthy period. Both valuers agree that going down the block, flats decrease in value as they come closer to Dreamland. It is conceivable that such flats may not enjoy average sale price increases over the years. In this light, Mr Sharp's valuation of £135,000 is on the high side.

53. In view of this the Tribunal finds the value of the long leasehold at £124,350 with the near freehold value (FHVP) at £125606 based on a multiplier of 100/99.

Existing short leasehold value.

54. Both valuers are aware of and referred to case law regarding the task of valuing short leasehold interests and the use of graphs of relativity.

55. Within the bundle the Tribunal was referred to

The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223(Mundy);

Mallory v Orchidbase [2016] UKUT 468 (LC);

Reiss v Ironhawk [2018] UKUT 0311 (LC);

Sinclair Gardens Investments (Kensington) Ltd [2017] UKUT 494 (LC)

Zuckerman v Calthorpe Estate Trustees [2009] UKUT 235 (LC);

Earl of Cadogan v Sportelli [2007] EWCA Civ 1042

Trustees of the Barry and Peggy High Foundation v Zucconi & Zanre [2019] UKUT 0242 (LC)'

Olyide

Deritend Investments (Birkdale) Ltd v Treskonova [2020] UKUT 164 (LC),

56. In Mundy it was determined that the preferred method is by analysis of market evidence before resorting to graphs. If they are to be used, Deritend makes clear that Savills 2016 and Gerald Eve are more reliable and may be used outside of the Prime Central London area.

57. In Deritend, the Upper Tribunal developed that guidance and said in its decision.

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. In any event, no such persuasive evidence was presented to the FTT.

59. We are satisfied that the outcome justified by the evidence provided to the FTT was a determination based on the average of the two 2016 PCL graphs.

58. In Zucconi the two graphs were averaged to arrive at a figure of relativity.

59. As Mr Dunsin points out at 5.05.15 of his report, Mallory v Orchidbase [2016] UKUT 468 (LC) provides a guide as to whether a comparable is relevant in determining short lease value.

‘We endorse and reiterate the Tribunal’s preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation.’

60. In this case there is very limited evidence of short lease sales, the sales of the subject property and that of 5B. These are helpful but for the reasons set out below, the weight of this evidence is not sufficient to be described as persuasive.
61. Mr Dunsin rejects the sale of the subject property as a comparable due to its poor condition and the need for subjective adjustments. He does, however make such adjustments for other comparables.
62. Mr Sharp analyses the sale of 7B but in averaging that with another transaction appears to accept that the actual sale price is not persuasive. In the light of the sale of 5B, for £80,000 in 2020 the sale price of 7B in September 2021 does seem low and may be an outlier in terms of reliable evidence.
63. The Tribunal rejects Mr Sharp’s adoption of an average of relativities from the graphs and the analysis of one sale. The graphs are based on a large basket of weighted evidence whereas the sale is of one property which may be an outlier. The use of average in this way heavily weights the one sale evidence and is a departure from case law guidance. The resultant relativity of 66.15% is significantly lower than the approved graph evidence.
64. The Tribunal examined the relevance of the sale of 5B. Mr Dunsin states in his report that the term remaining is 55.52 years. From handwritten notes Mr Sharp appears to use 55.5 years. This appears to be incorrect. The evidence from each valuer [146] and [238] is that this was sold in March 2020 with the balance of a 114 year lease from 1979 , when the term remaining was 73 years.
65. The subject property has an agreed term remaining of 54.10 years.
66. Neither valuer commented on this differential in their report although Mr Sharp appears to make some adjustment in hand written working but this is not discussed in evidence.
67. The significant difference in the terms remaining, the effect on relativity and the amount of the leaseholders marriage value share make this an important variable that needs consideration. This adds another layer of adjustment to the comparable which may be considered “extensive manipulation” envisaged in Mallory.
68. Given the approach of both valuers to the sale of 7B and the absence of commentary on the lease term differential for 5B, the Tribunal finds that these transactions, singly or together, do not amount to the necessary *persuasive* evidence under the guidance envisaged in Deritend.
69. Applying graphs of relativity, using the starting point of £125,606 the Tribunal finds that the correct relativity adopting guidance is 73.92%. This gives a value of the short leasehold of £92848.

70. Accordingly, the Tribunal determines the value of the short leasehold interest, excluding the Act rights at £92,848.

Relative value of the intermediate landlord's reversionary interest.

71. Mr Dunsin uses a single graph to arrive at a reversionary relativity of 91.7% but includes as evidence [131] the average graph showing 92.25%. He cites Zucconi, Oliyide, Midland Freeholds, Ironhawk and Deritend. His approach is in fact contrary to Deritend and Zucconi in that both cases used an average of the two approved graphs.

72. Mr Sharp uses the average of the two graphs at 92.25%. The Tribunal prefers this evidence and adopts a relativity of 92.25%.

73. Applied to a FHVP value of £125,606 the Tribunal finds the value of the intermediate landlord's reversionary interest to be £115,871.

Determination

74. Based on the findings above the Tribunal determines the premium payable as £19,330, of which £68 is payable to the Freeholder and £19,262 is payable to the head lessee. The Tribunal's calculation is shown below.

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Flat 7B Arlington House, All Saints Avenue, Margate, Kent CT9 1XP

Calculation of premium payable.

<u>Diminution of Head lessee Interest:</u>			
<u>Present interest</u>			
<u>Term 1</u>			
Ground rent		£40.00	
YP for 25.58 years @ 6%		12.91	£516
<u>Term 2</u>			
Ground rent		£80.00	
YP for 28.52 years @ 6%,	13.5	3.04	
deferred 25.58 years	0.2253		243
<u>Head Lease Reversion</u>			
Leasehold value of flat with 85 years unexpired 92.25% of £125,606		£115,871	Head Lessee Reversion value
PV £1 in 54.10 years @ 5.5%		0.055	£6,373
			Total Head Lessee interest
			£7,132
Proposed interest			£0
<u>Diminution of FH reversion: Present interest</u>			
Freehold value of flat		£125,606	(extra 5 years due to 90 year extension v 85-year reversion)
PV £1 in 139.1 years @ 5%		0.0011	£138
<u>Proposed interest</u>			
Freehold value of flat		£125,606	
PV £1 in 144.1 years @ 5%		0.0009	£113
			Loss to Freeholder
			£25

		Diminution of both Landlord's reversion:	<u>£7,157</u>
<u>Marriage Value</u>			
Long leasehold value of flat proposed	£124,350		
Plus Freeholder proposed interest	£113	<u>£124,463</u>	
LESS			
Present short lease value of flat £125,606 x 73.92%	£92,848		
Head Lessee's present interest	£7,132		
Freeholder Present Interest	138	<u>£100,118</u>	
Marriage Value		£24,345	
		Freeholders and Head Lessee share @ 50%	£12,173
		Add diminution in FH and Head Lessee Values	£7157
Enfranchisement price			£19,330
Division of marriage value £12173			
Diminution in value	Head Lessee £7,132		
	Freeholder £25		Total £7157
Head Lessee share Marriage Value	$7132/7157 \times 12173$ =		£12,130
		plus	£7132
		Total payable to Head Lessee	£19,262
Freeholder share Marriage Value	$25/7157 \times 12173 =$ 43		£43
		plus	£25
		Total payable to FH	£68

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.