



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

Case reference	:	BIR/00CN/OLR/2023/0048
Property	:	4 Yew Tree House 260 Bills Lane Shirley Solihull West Midlands B90 2PP
Applicants	:	(1) Stephen David Pitt (2) Heather Adderley
Representative	:	Lawrence & Wightman
Respondent	:	Business Flats Limited
Representative	:	Shakespeare Martineau
Type of application	:	s.48 Leasehold Reform Housing & Urban Development Act 1993
Tribunal members	:	Mr Ian B Holdsworth FRICS MCI Arb Mr Nicholas Wint FRICS
Date and venue of Hearing	:	8 April 2024 Tribunal Hearing Rooms, Centre City Tower, Hill St Birmingham B5 4UU
Date of Decision	:	1 May 2024

DECISION

Decisions of the Tribunal

- a. The Tribunal determines that the premium payable by the Applicants in respect of the extension of their lease at 4 Yew Tree House, 260 Bills Lane, Shirley, Solihull, West Midlands B90 2PP ('the Property') is **£47,550**.
- b. The Tribunal had determined that the unimproved freehold value of the subject flat is £160,000 and a current lease value of £104,168.
- c. The Tribunal's working calculation is set out in the appendices.

1. Introduction

- 1.1 This was an application made pursuant to s.48 of the Leasehold Reform Housing & Urban Development Act 1993 ('**the Act**') for a determination of the premium to be paid for the grant of a new lease of the Property.
- 1.2 By notice of claim dated 6 March 2023, pursuant to s.42 of the Act, the Applicants exercised their right for a grant of a new lease in respect of the subject property. At the time, the Applicants held the existing lease granted on 18 February 1961 for a term of 99-years from 25 March 1959 at an annual ground rent of £12.50.
- 1.3 The Applicants had proposed to pay a premium of £37,438 for the new lease.
- 1.4 On 10 March 2023 the Respondent landlord served a counter notice, admitting the validity of the claim, at a premium of £70,950 for the grant of a new lease.
- 1.5 The Applicants applied to Tribunal for a determination of the premium payable and any terms in dispute on 8 September 2023.

2. Background

The background facts are as follows:

- 2.1 The Property – 4 Yew Tree House, 260 Bills Lane, Shirley, Solihull, West Midlands B90 2PP.
- 2.2 Date of Applicants' notice – 6 March 2023.
- 2.3 Valuation date – 6 March 2023.
- 2.4 Date of Respondent's counter notice – 10 March 2023.
- 2.5 Applicants' date of application to Tribunal – 8 September 2023.

3. Property inspection

- 3.1 The Tribunal inspected the Property prior to the hearing on 8 April 2024 in conjunction with Mr Stephen Pitt.
- 3.2 Following the inspection of the Property the Tribunal then carried out an external inspection of each property submitted as comparable transaction evidence in the submissions made by the Experts on behalf of both parties.

4. The hearing

- 4.1 The hearing of this Application took place on 8 April 2023.
- 4.2 The Applicant tenants were represented by Ms Sarah Abel MSc MRICS, the sole Principal of Lawrence & Wightman Chartered Surveyors.

- 4.3 The Respondent landlord was represented by Mr Kenneth F Davis FRICS who acts as a consultant Chartered Surveyor with Cottons Chartered Surveyors, Birmingham.
- 4.4 Mr Samuel Boot a representative of Business Flats Limited attended as a witness.
- 4.5 Each Expert relied upon their report, as their evidence in chief, together with supplementary oral evidence. They were cross examined by the other Experts and answered Tribunal's questions. Finally, Tribunal heard submissions from each Expert in turn, each then acting as an advocate.
- 4.6 The parties had agreed the following:
- a. Valuation date – 6 March 2023.
 - b. Term – leasehold for a term of 99-years expiring 24 March 2058.
 - c. Unexpired term – 35.05-years.
 - d. Ground rent – £12.50 per annum.
 - e. Capitalisation rate – 7%
 - f. Deferment rate – 5.5%
 - g. Uplift to vacant possession value – 1%
 - h. 'No Act world' adjustment – 13.98%
 - i. Accommodation – a purpose built two-bedroom flat on the first floor of a purpose built three storey block.
- 4.7 There were three issues which the Tribunal was required to determine:
- a. The unimproved long leasehold value of the Property: the Applicants proposed £155,000; the Respondent submitted the value was £175,000.
 - b. Current leasehold value of the flat: the Applicants contended the current value of the Property was £104,168; the Respondent proffered a value of £90,000.
 - c. The premium payable for the new lease: the Applicants said the premium payable was £44,607; the Respondent sought £62,298 for the grant of a new lease.
- 4.8 **Issue 1: The unimproved long leasehold value of the Property**
- 4.8.1 The Property comprises a two-bedroom flat in a purpose built three storey building, being one of three blocks of flats which share access, carparking and communal grounds.

- 4.8.2 The Property is a first-floor flat with a separate kitchen, living room, double and single bedrooms, bathroom and small utility space.
- 4.8.3 The Tribunal is told the kitchen and bathroom were refitted in recent years. The property has uPVC double-glazed windows and gas-fired central heating.
- 4.8.4 It was emphasised to Tribunal that originally the Property had night storage heaters and timber framed single-glazed windows.
- 4.8.5 It was claimed by Mr Davis that the Property had a floor area of 61m², but this was not an agreed matter.
- 4.8.6 There had been four recorded open market sales of flats within the development over the last five-years. Both Experts referred to some or all these comparable transactions, although the weight and reliance which they placed on them differed. Summary details of these transactions are provided below.

Address	Development	Type	Date of sale	Adjusted price £
236 Bills Lane B90 2PP	The Woodlands	Two bedroom flat	November 2022	159,555
258 Bills Lane B90 2PP	Yew Tree	Two bedroom flat	July 2022	168,445
256 Bills Lane B90 2PP	The White House	Three bedroom flat	December 2021	233,580
246 Bills Lane B90 2PP	The Woodlands	Two bedroom flat	February 2020	149,087
34 Mallaby Close B90 2PW	Off-site some 500 metres away	Two bedroom maisonette	December 2022	212,000 ¹
84 Mallaby Close B90 2PW	Off- site some 500 metres away	Two bedroom maisonette	March 2023	200,000

- 4.8.7 In addition, Mr Davis relied upon two further transactions, 34 and 84 Mallaby Close, B90 2PW. These properties comprised maisonettes, situated approximately 500metres away from the Property. The sale prices are not adjusted for the passage of time from the sale date to the valuation date.
- 4.8.8 Ms Abel referred the Tribunal to 258 Bills Lane which is situated immediately above the Property and had sold some nine-months before the valuation date. Ms Abel claimed this flat had been refurbished to a good standard, some modifications had been made to the internal layout and it was well presented at sale. Ms Abel contended these improvements had contributed some £13,000 to the value of the flat as at the valuation date.

¹ Sale price not adjusted for date of sale compared to valuation date.

Ms Abel also placed weight on the transaction at 236 Bills Lane. This flat is situated in a nearby block known as The Woodlands. This flat had sold three times in 2022 at prices ranging from £110,000 in April through to £157,500 in November. Ms Abel said it was unclear as to why these sales had taken place and whether they were to interconnected parties, or arms' length transactions. Ms Abel told Tribunal the value of this property had been enhanced by the presence of gas-fired central heating and other improvements and she had made an adjustment of £5,000 to reflect these to flat as at sale.

- 4.8.9 Mr Davis referred to 256 Bills Lane in his submission. He said that, although this was a three-bedroom flat, it had a reported Gross Internal Area (GIA) of 91m² compared to the Property which had a GIA of 61m². He submitted this transaction as indicative of achievable prices at this location. It was noted this flat is located on the top floor of a converted two-storey building on a site adjacent the Property.
- 4.8.10 Mr Davis also referred to 258 Bills Lane, which he claimed was an identical flat to the Property, confirming the sale price at £165,000. He said no deduction for works undertaken to the flat was appropriate as the modifications were probably made more than 8 years ago and should be regarded as repair, upgrading and maintenance consistent with ownership of the dwelling.
- 4.8.11 Mr Davies had misgivings about the validity of the final sale value sale price of 236 Bills Lane at £159,555. He suggested the full market value of the property had not been achieved partly because an out of area Estate Agent brokered the sale and had therefore been undersold.
- 4.8.12 Mr Davis also referred to the sales of the properties in Mallaby Close. He said these maisonettes were situate near to the Property and had higher prices than flats located in Yew Tree House, The Woodlands and The White House. He said this sale illustrated the achievable value for 2 bedroomed properties in this location.
- 4.8.13 Mr Davis, with the consent of Ms Abel made a supplementary submission prior to the commencement of the hearing. This included summary detail for the comparable transactions including GIA floor areas sourced from Energy Efficiency Certificates. In his oral submission he claimed a small difference in GIA between the three bedroomed flat at 256 Bills Lane with a floor area of 91m² compared to The Property at 61m². He said this justified his reliance upon this transaction in determination of the long lease value of The Property.

Mr Davis made no adjustments for tenants' improvements nor the passage of time between transaction and valuation dates for any of his submitted evidence.

Tribunal's decision on long leasehold value

- 4.8.14 The Tribunal has reviewed all the comparable evidence, noting the different weight placed on the transactions by the Experts.
- 4.8.15 Ms Abel said she had given the greatest weight to the transaction evidence at 236 and 258 Bills Lane. She had taken into account the pattern of price changes over the period from sales to the valuation date and, based on her experience, had considered the area to have a price ceiling of £160,000. She had then stood back from the transaction evidence and concluded the long leasehold value at the valuation date is £155,000.
- 4.8.16 Mr Davis responded to the same question by explaining he had relied mostly upon the sale price of the three-bedroom transaction at 256 Bills Lane and had placed less weight on the sales of 236 and 258 Bills Lane. He said transactions at Mallaby Close justified a higher price than the price ceiling for two-bedroom flats suggested by Ms Abel. He explained his lack of time adjustments to sale prices by the unreliability of indexation and his opinion that the modifications to flats submitted as the comparable transactions were not material to value.
- 4.8.17 Having reviewed all the evidence, the Tribunal prefers that submitted by Ms Abel together with her analyses. It is accepted by both Experts the sale of the flat 258 Bills Lane located above the subject dwelling is good evidence given it is similar in type and style to the subject and the sale took place about 9 months before the relevant date. Further, despite the misgivings of Mr Davies the Tribunal is satisfied that the sale of 236 Bills Lane is reflective of the true open market value of the property at the time and therefore finds this transaction helpful along with the sale of 258 Bills Lane.
- 4.8.18 The Tribunal does not, however, agree with the deductions made by Ms Abel to reflect improvements to the Property.
- 4.8.19 The Tribunal has taken the transactions at 236 and 258 Bills Lane and adjusted these for the passage of time. The Tribunal makes no adjustment in respect of 236 Bills Lane for tenant's improvements, as the works were not considered improvements, but rather modifications consistent with repair and maintenance of the flat. The Tribunal has also reduced the value of the tenant's improvements made to 258 Bills Lane to £7,500 to reflect the nature of the works and likely period over which these were undertaken.
- 4.8.20 The Tribunal concludes that that the long lease unimproved value of the Property is £160,000.

4.9 **Issue 2: Short lease value – v – relativity**

- 4.9.1 Ms Abel told the Tribunal that she had reviewed available short lease sale evidence in respect of Yew Tree House, from which she had only been able to identify two transactions within the last five-years of flats sold with short leases, being 244 and 264 Bills Lane.
- 4.9.2 Mr Davis referred the Tribunal to the same comparable evidence in his submission.
- 4.9.3 Mr Davis also cited settlement evidence from 2020 which is provided in his submission. The Tribunal understands following questioning at the hearing that these settlements were not reached by him but are hearsay evidence supplied by Mr Boot of Business Flats Limited. Mr Boot did not make a witness statement to the Tribunal on the settlements or any other matter.
- 4.9.4 Ms Abel analysed the sale of 244 Bills Lane which sold in July 2022 by adjusting for the passage of time from the sale to valuation date and made a further adjustment for reduced relativity due to the shorter unexpired term. The outcome is a sale price of £102,029.
- 4.9.5 A similar analysis was done on the sale of the short lease for 264 Bills Lane which sold in June 2022. This produced an adjusted sale price for £64,796.
- 4.9.6 Ms Abel concluded that the difference in the sale prices following analysis of the transactions was a concern and determined the two sales did not constitute reliable evidence upon which to base an opinion of the current short lease value for the Property.
- 4.9.7 It is Ms Abel's contention that, in the absence of evidence, she should rely upon the Savills's enfranchiseable graph 2015. This follows the Upper Tribunal guidance in such circumstances. This gave a relativity of 66.54%, resulting in short lease value for the Property after the 1% uplift is applied, of £104,168.
- 4.9.8 Mr Davis had not adjusted the transaction evidence for the passage of time, or the wasting of the lease from date of sale to the valuation date. He said the sale of 264 Bills Lane reflected the poor condition of the flat and it was consistent with the general tone of prices in the area.
- 4.9.9 Mr Davis put weight on the hearsay settlement evidence gathered from his client. No details as to how these settlements had been achieved, nor analysis of the final premium sums was given, but the following premiums sums were given particular emphasis in the summary submission:

Address	Development	Date of settlement	Short lease value £
264 Bills Lane B90 2PP	5 Yew Tree House	June 2020	85,000
236 Bills Lane B90 2PP	2 The Woodlands	September 2020	85,000
254 Bills Lane B90 2PP	5 The Woodlands	February 2020	90,000

- 4.9.10 Mr Davis said this settlement evidence should be relied upon as it was his opinion it reflected the true value of short leases at this development. He emphasised the settlements were the most recent of any evidence having taken place up to three-years prior to the valuation date.
- 4.9.11 No sales' details for these properties are provided, nor any other information.

Tribunal's decision on short lease value

- 4.9.12 The Tribunal reviewed the content and opinion of both Expert submissions on short lease value. The two sales transactions both Experts relied upon produce results that vary by some £38,000 with sale dates about 2-3 years apart. Mr Davis adduced settlement evidence to supplement the transaction data.
- 4.9.13 The Tribunal must therefore determine what evidence to accept in this case. It was not persuaded by the evidence submitted by Mr Davis. Mr Davis has asked the Tribunal to rely upon a combination of transaction and settlement evidence in determining relativity. His report did not provide adequate details as to the source(s) of information upon which his settlement evidence had been based; neither was he able to explain how his raw data had been transposed into the premium sums and relativity; and he had not addressed the variability between open market transactions or adjusted for time in any of his submitted transaction evidence.
- 4.9.14 Mr Davis argues for a leasehold relativity of 51% for an enfranchiseable lease with 35.05 years unexpired. This is significantly lower than the 66.54% result from the Savills 2015 enfranchiseable graph for the same lease length. This difference was not explained or justified by Mr Davis.
- 4.9.15 Ms Abel reviewed the transaction evidence and concluded it formed an insufficient basis to determine relativity. She relied upon the Savills 2015 enfranchiseable graph to determine relativity and applied the agreed deduction for the Act Rights. The Tribunal agree with this conclusion and approach.
- 4.9.16 In support, the Tribunal has relied upon the guidance provided in *Trustees of Sloane Stanley Estate – v – Mundy & Lagesse: [2016] UKUT*

0223 (LC) in which the issue of a lack of market evidence was addressed (paragraph 168) it stated:

'The more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with the right under the 1993 Act at or near the valuation date. In such a case, the valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then make a deduction from that value to reflect the absence of those rights on the statutory hypothesis.'

- 4.9.17 This approach is widely adopted by the Upper Tribunal in determining the relativity “*where there was no reliable market transaction concerning the existing lease with the rights under the 1993 Act at or near the valuation date.*” The authorities given most weight in this matter are:
- a. *Sinclair Gardens Investments (Kensington Ltd) [2017] UKUT 494 (LC)*, which was a decision about properties situated in Chelmsford. The Upper Tribunal relied solely upon the Savills's 2015 graph as the source of this relativity.
 - b. In *Oliyide –v– Elmbirch Properties plc [2019] UKUT 190 (LC)*, and the *Trustees of Barry & Peggy Foundation –v– Zucconi & Ancor [2019] UKUT 242 (LC)*, the Upper Tribunal also relied upon the Savills and Gerald Eve unenfranchiseable graphs to determine relativities. The properties in both these cases are situated beyond central London and the data drawn from the relativity graphs was deemed appropriate without adjustment.
 - c. In *Midland Freeholds Limited and Speedwell Estates Limited appeals [2017] UKUT 463 (LC)*, the Upper Tribunal decided the same graphs could be appropriately used to determine leasehold relativity in the Midlands and the Northern counties.
 - d. In *Deritend Investments(Birkdale) Ltd v Treskonova {2020} UKUT 164 (LC)* and *Trustees of Barry and Peggy High Foundation v Zucconi and Ancor {2019} UKUT 242 (LC)*, the Upper Tribunal reiterated their commitment to rely upon the Savills 2015 graph in determination of relativity in the absence of reliable transaction evidence. In these decisions no adjustment is made for geographical location of property.
- 4.9.18 The Tribunal adopts the Savills's 2015 enfranchiseable graph as the source of the relativity. It is considered the most reliable data source, given the number of transactions used to construct the hedonic regression analysis curve. The Savills's enfranchiseable graph for a 35.05-years unexpired term gives a relativity of 66.54%.

4.9.19 Tribunal concludes that use of the Savills's 2015 enfranchiseable graph as a source of relativity is the appropriate and the one that follows Upper Tribunal guidance in these circumstances.

4.9.20 Use of the Savills 2025 Enfranchiseable Graph gives a 66.54% leasehold relativity and produces a current lease value of £104,168. From this sum an agreed deduction of 13.98% is made to reflect Act Rights.

4.10 **Issue 3: The premium**

4.10.1 Taking into account these determinations, Tribunal accordingly determines the appropriate premium to be £47,550 and a copy of its valuation calculation is appended to this Decision.

4.11 **Other matters in dispute**

4.11.1 No other matters of dispute were raised with the Tribunal before or at the hearing.

4.11.2 The Tribunal assumes that the statement made in the Notice of Claim at section 4 applies, which stated:

I propose that the terms of a new lease should be as follows:

For a term of 90-years in addition to the remaining unexpired term of the present lease at a peppercorn rent to include various prescribed clauses and otherwise in accordance with the existing lease.'

4.11.3 It is on this basis that the Tribunal determination is made.

Name: Ian B Holdsworth Date: 1 May 2024
Valuer Chairman

Appendix - Valuation

4 Yew Tree House, 260 Bills Lane Shirley Solihull B90 2PP

The Tribunal determines that the value of the premium payable by the Applicant for the subject Property is calculated as follows:

Freeholders Present Interest

Term

Ground Rent	£12.50	
YP 35.05 years	<u>12.9522</u>	£161.90

Reversion (to Freehold)

Market Value	£160,000		
<u>Add Freehold uplift 1%</u>	<u>£1,600</u>		
	£161,600		
PV 35.05 years @ 5.5%	<u>0.1531</u>	<u>£24,740.96</u>	£24,902.86

Freeholders Proposed Interest

Extended Leasehold Value	£160,000		
PV 125.05 years @ 5.5%	<u>0.00124</u>	<u>Less</u>	£198.40

Marriage Value

1. Proposed Interests

Freehold	£198.40	
<u>Add Leasehold</u>	<u>£160,000</u>	£160,198.40

2. Present Interests

Freehold	£24,902.86	
Existing Leasehold	£104,168	
<u>Less No Act World 13.98%</u>	<u>£14,562.13</u>	<u>£114,508.73</u>

Total Marriage Value £45,689.67

Marriage Value Share at 50% Add **£22,844.84**

Total Premium Payable **£47,549.30**

SAY **£47,550.00**

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 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.