



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

**Case Reference** : **CAM/42UF/OLR/2022/0012**

**Property** : **10 Trinity Mews,  
Bury St. Edmunds  
Suffolk IP33 3AT**

**Applicant** : **Herbert H K Bailey &  
Michelle E Doyle  
(Leaseholders)**

**Representative** : **Backhouse Solicitors Ltd**

**Respondent** : **Lamda GR Ltd  
(Landlord)**

**Representative** : **Estates and Management Ltd.**

**Type of Application** : **Determination of terms and  
premium of a lease extension**

**Tribunal Members** : **Mr N Martindale BSc MSc FRICS**

**Date of Decision** : **22 May 2023**

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**DECISION**

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**Decision**

1. The premium to be paid by the applicants for the lease extension for the Property is **£19,766. (Nineteen thousand seven hundred and sixty six pounds).**
2. All other terms are agreed between the parties and are therefore outwith the jurisdiction of the Tribunal.

## Introduction

3. This application dated 28 February 2023, was prepared and filed with the Tribunal by Backhouse Solicitors Ltd for the leaseholders, under S.48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). It is for a determination of the premium to be paid and the terms of an acquisition of an extension to the leasehold interest in the Property. A S.42 Notice was dated 1 April 2022 although the parties later agreed the antecedent valuation date was 21 April 2022.
4. Valuers for the parties are; Charles Kingsley-Evans MA (Oxon), MCI Arb, Dip Arb, MRICS, Registered Valuer for the applicant leaseholders. Andrew Balcombe FRICS FCI Arb for the respondent landlord.
5. It appears to the Tribunal from the filed bundle, that Mr Kingsley-Evans was directly engaged by the applicants prior to the service of their Notice of Claim for his advice on the likely cost of a lease extension at the Property; either on the statutory basis or on a possible shorter voluntary lease extension, if the landlord was so minded. In the event, the applicants adopted the statutory basis and served their Notice of Claim through their solicitors. The Notice of Claim premium figure was £12,000: The Counter Notice premium figure was £27,700.
6. The Tribunal issued Directions dated 28 November 2023 through Regional Surveyor Mary Hardman FRICS IRRV (Hons). These set out the requirements on the parties for the determination. Delays in preparation of the bundle ensued. However the Tribunal, rather than strike out the application issued additional Directions through Legal Officer Lyn Ajanaku, which accompanied her letter dated 10 March 2023 to the parties. These essentially set out a revised timetable for compliance for the matter to be considered by the Tribunal. It was to be on the “papers” only, without a hearing. Neither party requested a hearing. An inspection was not requested or required.
7. The Tribunal received the bundle from the applicants’ solicitors. It included main reports from each valuer with details of recorded sales transactions, HMLR confirmations of transactions, graphs and floor plans. None of the basic data was questioned by the parties. The Tribunal also welcomed the late inclusion of a short email exchange dated 19 April 2022 between the valuers for the parties. This confirmed various key issues as agreed. The main valuation issue remaining was the correct relativity of the short leasehold capital value, to the virtual freehold capital value, of the Property.

## **Property**

8. Trinity Mews is located to the north of the town centre of Bury St Edmunds. It is accessed from Springfield Road which runs off the A1302 Parkway Road. It runs north/south. It is within a predominantly residential area but close to the main retail area to the south west.
9. The Property was part of a three storey Block of similar flats. Access to the Property is by a communal entrance door, hallway staircase and landings. The Block is one of several which together form the small residential estate. The other original residential blocks in the Development of Trinity Mews are very similar to those in this Block. None of these blocks apparently have a lift. Trinity Mews is a cul de sac and was developed in the 1980's to provide a number of three story buildings in which there are flats of different configurations.
10. The Property is a purpose built, small ground floor flat with two bedrooms; a double bedroom with a walk in wardrobe and a single. The flat has a living room with a kitchen off and separate bathroom/wc. The GIA was not agreed. The landlord's valuer had it as 49.9m<sup>2</sup>; the tenants' valuer as 47m<sup>2</sup>. Fortunately the exact size was not critical to the capital valuation or in the analysis of sales of otherwise very similar modern purpose built flats of the same age and lease characteristics on the same estate.
11. Any additional value in the Property attributable to tenants' improvements has to be ignored under the Notice of Claim but, none were identified. Similarly any reduction in value of the Property attributable to any disrepair by the tenant was also to be ignored. Again no specific items of tenant disrepair were identified. The Property appeared to be much as it had been after initial construction.
12. Windows to the Property were upvc framed with double glazed units within. The space and water heating was reported as apparently electric powered, with mains power and water feed and foul drainage to the Block. The floor plan and size of the Property supplied in the bundle is typical of the other small two bedroom flats in the Block and the whole development, other than often being a 'mirror image' layout.
13. Parking of vehicles was communal in the estate but common to other flats here, this Property also has its own dedicated space reserved space. Otherwise the Property did not include any external areas or ancillary stores, garages or other buildings exclusive to this Property.

## **Lease**

14. The Property is held on a lease for a term of 99 years from the 1 January 1987 to the 31 December 2085. This gave the agreed

unexpired term of 63.70 years at the AVD. The passing rent was £75 pax from 1 January 2020, rising to £100 pax from 1 January 2053 for the rest of the lease term unexpired. There is no intermediary lease.

### **Agreed Facts**

15. After an email exchange on 19 April 2023 between the valuers for the parties the following key issues of dispute were settled and thus fell outside the jurisdiction of the Tribunal to determine: The AVD is 21 April 2022; the unexpired term 63.7 years; the capitalisation rate 6.5%; the deferment rate 5%; the capital value of the long leasehold of the Property £166,500; and lastly the capital value of the virtual freehold of the Property £168,000.
16. The value of the right to receive the income stream from the short leasehold in the Property for the rest of the unexpired term was therefore essentially agreed in principle by the parties. That said this actual arithmetical element of the final premium had unfortunately not been directly settled by the parties, or their respective valuations updated. These being settled matters the Tribunal did not further examine the case put forward in the valuers' respective reports prior to their agreement of them since other than to formally determine the final calculations based on the now agreed parameters.
17. The remaining key element not agreed and to be determined was the relative value of the extant short leasehold interest in the Property. This may be found, either by reference to actual sales of short leaseholds, or by reference to graphical analysis of market trends of short and virtual freeholds, or a combination. While actual sales are not always available or may require too much adjustment, they are generally preferred by the Tribunal as the best evidence of the capital value of the short leasehold interest in the local market. This short leasehold value is required to determine the marriage value potential released to both parties, when the surrender and re-grant exercise is complete.

### **Applicants Representations**

18. Mr Kingsley-Evans report stated: *“As regards relativity, comparing the value of a lease with between 64 and 65 years unexpired with that of a lease of 125 years or more, I have drawn on a range of figures available from a number of reliable and customarily accepted sources. Tribunal Graphs published show a relativity on this basis of 85.86%. Leasehold Advisory Services, on the same basis, give a relativity of 90.84%. Leasehold Valuers, on the other hand, publish a relativity of 88.74%.*

19. *Among reputable agents dealing with such matters (including Cluttons, Charles Boston, Knight Frank, Gerald Eve and Savills), the average relativity for this length of lease is 83.14%. In combination of the evidence above and for the purposes of this case, I have adopted a relativity level of 88%. This figure expresses my opinion of the relative value of the Property held on a lease with only 64 years and 9 months unexpired (its current term), as against the same Property with a lease of 125 years or more.”*
20. Although there had reportedly been two actual sales of short leases of comparable flats on the estate around the AVD, he did not refer to them. Instead, the valuer concluded by reference to the relativity of his adopted 88% for reasons set out above. He places the value of £148,000 on the short leasehold at the Property therefore, being some 88%, of the virtual freehold capital value.
21. Accordingly Mr Kingsley-Evans calculates the final premium should be £14,744, rounded to a figure of £14,750. This being a combination of the term and of the reversion. The significant difference in values between the parties, being in the reversion element in some 64 odd years time and in the marriage value rather, than in the term income stream.

### **Respondent’s Representations**

22. *“The marriage value is the difference between the combined value of the current freehold/leasehold interests and the future freehold/leasehold interests, with the latter being larger. Legislation has determined that leaseholder must pay 50% of this to the freeholder. The value of the current freehold/leasehold interests and future freehold interests were now agreed... “...but I also need to calculate the value of the existing leasehold interest in the flat.”*
23. *“Valuers are specifically required to value this interest on the basis that the leaseholder has no right to extend their lease and the freeholder can simply refuse to negotiate. Since the important decision in *The Trustees of the Sloane Estate v Mundy* [2016] UKUT 223 (LC), it has been a requirement for surveyors to place more weight on empirical evidence if it were available, but it had to be relevant to the valuation in hand. The Valuer refers to a sale of first floor flat 9 Trinity Mews adjacent to the Property, reported as sold in a ‘reasonable condition.’ The valuer here prefers this evidence to that from the average relativities from the two PCL (Savills and Gerald Eve) unenfranchisable graphs.*
24. The valuer of the landlord sets out the background: *“The property was placed on the market in April 2022 and was under offer when I reported in June 2022 at £130,000...”* and completed at this price September 2022. (Copy details and the Land Registry document were

included). *“This was a sale in the “real world” where the purchaser is aware that they have the right to extend the lease, whereas the calculation of the premium requires the valuer to assume that the leaseholder has no such right... I have relied on the two tables prepared by Savills for Unenfranchiseable and Enfranchiseable valuations. The two figures are 84.98% and 80.68% and the difference is 5.06% which I have rounded down to 5%. The figures are attached in Appendix 5. That would give a figure of £123,500...”*

25. *“I am aware that there are a number of decisions on the discount in Tribunals but I have not relied on them as we are not meant to rely on such evidence. I have also noted that the table known as the Graphs of Relativity shows a discount of 3.99%. However, that figure is derived from tables that have now been replaced, notably the 2009 Gerald Eve table. By contrast and as will be seen from my commentary below, the current Savills tables have considerable credibility with the Upper Tribunal.”*
26. *“I have noted that some Tribunals are reticent to allow the premium to be determined by evidence from one sale and we have therefore also considered the alternative methodology which is the use of relativity tables. In the Mundy determination the Upper Tribunal ruled that none of the tables were particularly reliable, but they did state that the Gerald Eve table was the “least worst”, particularly for Prime Central London. There were then a number of decisions in the Upper Tribunal which culminated in the decision in Deritend Investments (Birkdale) Ltd v Kornelia Treskonova [2020} 0164 (Deritend). This gave strong “guidance” that where there is no real world evidence, the value of the existing lease with no Act rights, was to be based on the average figure of the Gerald Eve 2016 table and the Savills Unenfranchiseable table. It further gave “guidance” that the non PCL tables were not to be used.”*
27. *“The average of the two PCL graphs returns a relativity rate of 80.75% which points to an existing lease value without Act rights of £134,580. Ultimately, I consider there is no reason to disregard the sales evidence from flat 9, because it is an identical flat on the same estate that was fully tested in the market by a local estate agent. This has to have stronger weight than reliance on tables based on evidence in a different location. I have therefore based my assessment of the premium payable on a short lease value with no Act rights of £123,500.”* The percentage relativity without adjustment of the raw data for time and/or condition/ lease length differentials, would be  $\text{£123,500/£168,000} = 73.5\%$  relativity. The valuer adopts this sale of the short leasehold. Unlike the sale referred to below, here the valuer does not conclude that that seller was “badly advised”.
28. *“I am aware that there was a sale of a second flat on the estate, namely 48 Trinity Mews which was sold on an existing lease in*

*October 2022 for £160,000. I have placed no weight on the figure as it is clearly out of kilter with the rest of the market. The purchaser was clearly poorly advised and/or not aware that the cost of extending the lease was considerable.”* The percentage relativity without adjustment of the raw data for time and/or condition/ lease length differentials, would be £160,000/£168,000 = 95% relativity. By contrast to the sale of Flat 9, the valuer here, disregards this one as showing an excess relativity despite the lease being in effect a short leasehold. The valuer concludes instead that the purchaser was “badly advised” by paying way over the odds for the short leasehold, almost as much as one with an extended lease.

29. Other matters in contention having been settled, the Respondent’s valuer concludes the value of the Short leasehold of the applicant, at the AVD, is £123,500. The Respondent has included in the bundle his original valuation of the premium but, without incorporating the settled matters which would have modified his final premium of £25,800 somewhat.

## **Decision**

30. A photograph of the front exterior and parts of the interiors of the Property and of comparables were included in the reports. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.
31. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3, (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.
32. The (a) diminution is: 3(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.
33. Paragraph 4 of the Schedule, as amended, provides that the freeholder’s share of the (b) marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
34. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement. Neither side contended for this.

35. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court and the unexpired residue of the lease for the Property is agreed.
36. The principal task was the valuation of the existing short lease at the Property. The contrast is between case law around the use of actual sales of leases against the use of the RICS and the more recent and established use of the graphs Savills and Gerald Eve (No Rights Act) data and graphs and specifically their average figure. The Upper Tribunal has preferred actual sales transactions to the use of graphs but, only if the former require minimal adjustment, or none at all and for that matter that it provides relevant and coherent evidence.
37. In this application the applicant's valuer considers in effect that the transactions require too much manipulation before they can be used or provide an inconclusively high marriage value addition to the final premium. One sale (of No.48) appears excessive, the other (of No.9) appears to be at below market value, though in all other respects the raw sales prices need no further manipulation. Instead the applicant uses an approximate average of the relativities from the various graphs mentioned to find relativity of the applicant's current short leasehold. He still refers to the older RICS, LEASE and other datasets from the early 2000's despite these now generally falling out of favour with the Upper Tribunal rather than placing greater or exclusive weight on the Savills and Gerald Eve unenfranchisable graphs, often now frequently averaged by valuers to obtain relativity (short leasehold to freehold).
38. The value of the existing lease is to be taken as the price that a buyer would pay for a short lease if the right to extend that lease did not exist in law. One would expect this figure to be lower than where, in reality, the short lease could be extended as of right by the leaseholder. As transactions of leases of flats all occur in the 'Act' world (Leasehold Reform Housing and Urban Development Act 1993), such lease sales would be inflated to some degree. Such inflated figures would need to be adjusted to arrive the 'No Act' values needed for this lease extension.
39. In *Mallory & Others v Orchidbase Ltd* [2016] UKUT 0468 (LC), the Upper Tribunal among other matters preferred use of actual transactions over graphs, provided that the former only required limited adjustment. In *Deritend v Treskonova* [2020] UKUT 0164 (LC) where in the absence of actual transactions, the use of the more recent graphs from Savills and Gerald Eve averaged were adopted in preference to the previously more established graphs from the RICS post millennium review of the data sets. In the Mallory case the sales of short leaseholds, were of flats in the same block within 3 months of the AVD. These sales were used by the UT in that case.
40. In the alternative here, such is the unreliability of the one high and the one low priced sales of two similar comparable flats here, apparently of



essentially the same lease, the Tribunal takes the view that, they cannot form the basis for deriving a reliable relativity between long leasehold and short leaseholds for this particular Property. The use of graphs is therefore required. Martin Rodger's statement in his Deritend decision refers: *"The two PCL graphs...should be considered as a starting point where no, or insufficient transactional evidence has been submitted by the parties."* He continues *"The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence..."*. In addition the Upper Tribunal in the Orchidbase decision, *"We endorse and re-iterate 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. In this case we are satisfied that there is sufficient market evidence to render unnecessary any reference to graphs of relativity."*

41. The valuer for the applicant here effectively concludes that devaluing the sales requires *"artificially extensive manipulation"* and that there were in effect *"too many adjustments required"* as found in other UT cases, for them to be useful. The Tribunal finds that the details of the sales as provided without any real adjustment, almost directly contradict each other, as though two transactions occurred where both parties involved received poor advice and/or or took bad actions on their part in the transactions. One appears an excessive relativity; the other at a very low relativity, for apparently the same property interest.
42. The long leasehold and freehold capital values of the Property having been settled by the parties, any adjustment of price trends of comparable flats on the estate is not considered further. There is no established price differential pattern for sales of flats between floors or between blocks either which might explain the two sales mentioned.
43. On this occasion therefore, the Tribunal disregards both sales because they show almost exactly the same, yet opposite and almost equally improbable relativities for short leasehold flat values. The applicant's valuer disregards both sales, preferring an average of older and newer graphs producing a relatively high percentage. The respondent's valuer whilst taking account of the graphs and particularly of the more recent ones favoured by the Upper Tribunal, prefers instead the flat sale with the particularly low relativity, whilst ignoring the other.
44. The Tribunal therefore, on balance prefers the use of the average of the relativities derived from the average of the Savills and Gerald Eve No Act Rights graphs here. On this occasion taking into account both sales of short leaseholds which together provide such contradictory evidence of relativities, even without any adjustments, the Tribunal rejects both sales. It prefers the use of the use of the average relativities found from the reference to the Savills and Gerald Even unenfranchisable graphs.

The two numbers are helpfully included in the Respondent's valuers report, which together with equal weighting provide a relativity for this calculation of 80.75 % short leasehold value: freehold value at this Property AVD. The Tribunal's valuation is attached.

45. **The premium payable for this lease extension application is as stated above in the opening paragraph of this Decision.**
46. At Box 9 to the Application Form it asks: **TERMS IN DISPUTE AND PROPOSED PROVISIONS TO BE CONTAINED IN THE NEW LEASE.** The applicant made the following statement: *"The terms in dispute are the premium to pay; the terms of the new Lease other than the extension to the existing lease of 90 years and the parties to the new lease. The extension of 90 years to the existing term of the Lease and reduction in ground rent to a peppercorn should be contained in the new lease, and these have been accepted by the Landlord's counternotice."*
47. The premium figure is determined by the Tribunal above. There does not, from this paragraph above, made in reply to the Tribunal's standard questions at Form Box 9, appear to be any other outstanding clause in the draft lease which is in dispute. However at Bundle page 85 (para 3 & para 4) and at page 86 (para 8), additions are highlighted/deleted in red ink.
48. It appears that the applicant might be challenging both proposed clauses from the landlord, in their entirety at these specific points. However, no alternative wording is suggested, nor have any comments on the proposed change been made in the accompanying materials in the bundle that are obvious to the Tribunal.
49. That said, at page 89 reference is made in the bundle by Sarina Hayes for Backhouse Solicitors Ltd. solicitors for the applicants, in a draft email to the respondents. It asks for all these 3 added paragraphs to be deleted from the draft lease so that the new lease is otherwise on the same terms as before. That said this email appears to remain in draft /unsent form and that this challenge was not pursued further, and/or the issue was resolved directly between representatives to the parties.
50. As these intended challenges have not been overtly represented to the Tribunal in this bundle or elsewhere, the Tribunal must conclude that they were resolved between the parties since preparation and submission of the bundle; and that as they are now settled fall outwith the jurisdiction of the Tribunal to determine one way or another.

**Name: Neil Martindale**

**Date: 22 May 2023**