



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

Case Reference	:	LON/00AE/OLR/2016/0280
Property	:	230 Empire Court, North End Road, London HA9 0AL
Applicant	:	Leon Steinhaus
Representative	:	Maurice Berger FRICS
Respondent	:	LKB Investments Limited
Representative	:	Russell-Cooke LLP
Type of Application	:	Eric Shapiro BSc (Est Man), FRICS, FCI Arb
Tribunal Members	:	Robert Latham Duncan Jagger MRICS
Date and venue of Hearing	:	20 September 2016 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	29 September 2016

DECISION

(i) The Tribunal determines that the premium payable by the Applicant in respect of the extension of his lease at Flat 230 Empire Court, North End Road, Wembley, Middlesex, HA9 0AL is £29,136.

(ii) We have determined that the relativity rate is 78.65%.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms for a new lease.

Background

2. The background facts are as follows:

- (i) The flat: Flat 230 Empire Court, North End Road, London SW7 1AB;
- (ii) Date of Tenant’s Notice: 26 June 2015;
- (iii) Valuation Date: 26 June 2015;
- (iv) Date of Application to the Tribunal: 16 February 2016;
- (v) Tenant’s leasehold interest:
 - Date of Lease: 13 September 1985;
 - Term of Lease: Expiring on 21 March 1975;
 - Ground Rent: £105pa increasing to £140 on 13 September 2025 and to £240 after 21 years;
- (vi) Landlord: LKB Investments Limited
- (vii) Tenant: Mr Leon Steinhaus;
- (viii) Tenant’s Proposed Premium: £20,996;
- (ix) Landlord’s Proposed Premium: £32,000.

The Hearing

3. The hearing of this application took place on 20 September. The Applicant, tenant, was represented by Mr Maurice Berger FRICS. The Respondent, landlord, was represented by Eric Shapiro BSc (Est Man), FRICS, FCI Arb. We are grateful to the two experts for the assistance that they provided and the realistic approach that they adopted.
4. There is no Agreed Statement of Facts and Issues in dispute. The calculations of the two experts are at p. 213 (Mr Berger) and p.203 (Mr Shapiro). At the commencement of the hearing, we were told that there were three issues in dispute:
 - (i) Relativity: Mr Berger contended for 84.50% and Mr Shapiro for 75.91%. Mr Berger conceded that he had made an error in computing his figure and that this should be 82.84%.
 - (ii) Capitalisation: Mr Berger contended for 7% and Mr Shapiro for 6%. The experts agreed that the difference only affected the premium by some £200. At the instigation of the Tribunal, they agreed to adopt 6.5%.

(iii) The value of the Extended Lease: Mr Berger contended for £200,000 and Mr Shapiro for £215,000. Again, the experts agreed to adopt a figure of £207,500.

5. The parties have agreed the following:

(i) The subject flat comprises three room, a kitchen and bathroom. The GIA is 549 sf.

(ii) Unexpired Term: 59.73 years.

(iii) Deferment Rate: 5%;

(iv) Uplift from long leasehold to virtual freehold: 1%.

6. The only issue which we are required to determine is the figure to be adopted for relativity.

Relativity

7. The following guidance on relativity is provided by the learned editors of “Hague on Leasehold Enfranchisement” (6th Ed, 2014) at [33.17]:

“The assessment of the value of the tenant’s existing lease is often problematic. Sales of flats in the locality on leases of a comparable unexpired term will invariably be “tainted” by being sold with 1993 Act rights, which have to be disregarded. If there is evidence of sales of flats in the locality on very long leases, valuers can assess the value of the flat on its existing lease by taking a proportion of the long lease value. The relative value of a lease when compared to one held on a very long term varies with the unexpired term. This “relativity” has not proved easy to establish. A number of organisations publish tables or graphs of relativity, representing their views, which views may be based on market transactions, settlements, expert opinion and/or tribunal decisions. This topic was recently considered in detail by the Lands Tribunal (in *Nailrite Ltd v Cadogan* [2009] 2 E.G.L.R. 151). It held that relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity (see *Nailrite Ltd* [2009] 2 EGLR 151 at [228] applying the guidance of the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] R.V.R. 39).”

8. In a footnote, the Editors note:

“In October 2009, the RICS published its report on Graphs of Relativity, in response to the suggestion in *Arrowdell*. The Leasehold Relativities Group, chaired by Jonathan Gaunt QC and comprising eight surveyors, considered all the published graphs but were unable to agree upon definitive graphs to be used as evidence by tribunals as had been proposed by the Lands Tribunal. The report reproduced all the published graphs together with details of the data that lies behind each. In *Re Coolrace Ltd* [2012] UKUT 69 (LC); [2012] 2 E.G.L.R. 69, the Lands Chamber adopted the Lease graph of relativities, based on Tribunal decisions across the country, in preference to a local West

Midlands graph, which had been applied by the LVT. A plea for a further attempt to agree a graph was made. In *Trustees of Sloane Stanley Estate v Carey-Morgan* [2011] UKUT 415 (LC); [2012] R.V.R. 92, the Lands Chamber assessed the value of short leases with 4.74 years unexpired by capitalising the unimproved rental value to the end of the term. This was appropriate for such a short lease, instead of using graphs of relativity.

In *Earl Cadogan v Cadogan Square Ltd* [2011] UKUT 154 (LC); [2011] 3 E.G.L.R. 127, the Upper Tribunal was faced with the difficulty of conflicting evidence as between evidence of adjusted transactions (producing a relativity of 53 to 56%) and evidence from graphs (producing a relativity of 38%). An analysis of the evidence from the Savills 2002 enfranchisable graph as against the Gerald Eve non-enfranchisable graph suggested that the adjustment of 10% made by the nominee purchaser to adjust the transactional evidence to reflect 1993 Act rights was too low and the Tribunal decided that a deduction of 25% was appropriate. The unexpired terms in that case were 17.75 years.”

9. The Upper Tribunal has now given further guidance in the decision of *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC). The three cases considered by Mr Justice Morgan and Andrew Trott FRICS involved Prime Central London. At the end of an extensive and learned judgment, the UT gave guidance for future cases:

“164. We would have liked to have arrived at a method of valuation which would be clear and simple and predictable as to its future application to determine the relativities for leases without rights under the 1993 Act. If we had been able to support the use of the Parthenia model that might have been the result. Further, if we had been able to give unqualified approval to the Gerald Eve graph, that too would have simplified matters. However, in the event, it is clear to us that we cannot support the use of the Parthenia model and we have reservations about the use of the Gerald Eve graph. Nonetheless, we will try to describe those matters which might be of use in future cases.

165. First, this case was brought to provide a test of the Parthenia model. It is clear to us that the Parthenia model has failed that test. It should not be put forward in a future case as a method of arriving at the value of an existing lease without rights under the 1993 Act.

166. Secondly, the valuations required under schedule 13 to the 1993 Act relate to market value on the statutory hypotheses. When the parties attempt to negotiate the amount of a premium in accordance with schedule 13 and when the tribunal comes to determine a dispute as to the amount of such a premium, the relevant valuation date will generally be a date in the past. The parties and the tribunal must focus on the state of the market at that date. What matters is how the market performed at that date. If the market, for example, for leases with rights under the 1993 Act at that date was influenced by certain matters, then that influence must be taken into account. For example, if the market at a date in the past was influenced by a particular graph of relativity then that influence is a market circumstance which is to be taken into

account. It is not open to a party when discussing the market at a date in the past to suggest that the market was badly informed or operating illogically or inappropriately in order to invite the tribunal to replace actual market forces with what are suggested to have been more logical or appropriate considerations.

167. Thirdly, it is possible that the market might perform differently in the future from the way it has performed in the past. It is possible that in the future less weight will be given in the market to a particular graph or a new graph might emerge. If those new developments affect market behaviour then they must be taken into account when assessing market forces. It is conceivable that decisions of the tribunals might also influence valuers and in turn influence parties in the market. If that were to occur, then the changed market circumstances before a relevant valuation date must be taken into account when considering market value at that date.

168. Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.

169. Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, 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 to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.

170. In the past, valuers have used the Savills 2002 enfranchisable graph when analysing comparables, involving leases with rights under the 1993 Act, for the purpose of arriving at the FHVP value. The authority of the Savills 2002 enfranchisable graph has been to some extent eroded by the emerging Savills 2015 enfranchisable graph. The 2015 graph is still subject to some possible technical criticisms but it is likely to be beneficial if those technical criticisms could be addressed and removed. If there were to emerge a version of that graph, not subject to those technical criticisms, based on transactions rather than opinions, it may be that valuers would adopt that revised graph in place of the Savills 2002 graph. If that were to happen, valuers and the tribunals might have

more confidence in a method of valuation for an existing lease without rights under the 1993 Act which proceeds by two stages. Stage 1 would be to adjust the FHVP for the property to the value of the existing lease with rights under the 1993 Act by using the new graph which has emerged. Stage 2 would be to make a deduction from that value to reflect the absence of rights under the 1993 Act on the statutory hypothesis.

The Submissions of the Parties

10. The UT also considered the benefit of rights under the Act:

“127. In his opening submissions, Mr Jourdan for the lessor of Flat 5 described the benefit of rights under the Act in this way: “Act rights are valuable, for a number of reasons. The tenant has the right, at a time of his choosing, to serve a notice claiming a new lease. He can buy the lease of the flat he wants paying, in effect, only part of the price immediately, with a further payment due at a time of his choosing. The price is fixed on a basis which excludes the tenant’s overbid whilst guaranteeing him 50% of the marriage value. He has the right to have the price determined by an independent tribunal, and is not at risk as to costs (unless he acts unreasonably). If the claim proceeds, it can take a considerable time before the price is paid, during which period he pays no interest but only the ground rent. If property prices go up, he keeps the increase in the price after the valuation date. If prices go down, he can withdraw the notice and serve another one a year later. The price is determined on a basis which disregards any effect of improvements, so meaning that he can make improvements which might not be economic if he held only an unenfranchiseable lease.”

128. We did not understand Mr Rainey to disagree with this description of rights under the Act. We agree that the Act confers these substantial benefits on lessees who qualify under it.”

The Submissions of the Parties

11. In his report, Mr Shapiro considered both the RICS graphs and local transactional evidence. In his evidence, he placed his emphasis on the latter. He relies on 25 Empire Court sold for £160,000 on 28 March 2014 with an unexpired term of 61 years. This is a ground floor two bedroom flat in modernised condition with no balcony and a GIA of some 550 sq ft. Unlike the subject flat which looks out onto the railway line (see p.169), there is no visual or noise pollution from the rail track.
12. Mr Shapiro first adjusts the sale price for time utilising the Land Registry House Price Index for Brent which gives an adjusted figure of £186,957.

He then makes an adjustment of 4.67% in respect of "Act Rights". This reduces a figure to £178,226. He finally makes a reduction of 7.5% in respect of the impact of the rail tracks. This reduces the figure to £164,859. He finally divides this figure by £209,600 to compute a figure for relativity of 78.65%. The figure of £209,600 is the agreed extended lease value of the subject flat of £207,500, increased by the agreed 1% to produce the virtual freehold value.

13. Mr Berger's preferred approach is to rely on the RICS graphs. However, were he to adopt Mr Shapiro's approach, he suggested: (i) that no adjustment should be made for "Act Rights" and (ii) a reduction of just £5,000 should be made in respect of the proximity of 25 Empire Court to the rail track.
14. Mr Berger's preferred approach is to rely upon Nesbitt & Co graph in the 2009 RICS Greater London and England Graphs. The relevant figure from this graph is 82.84%. This is lower than the other graphs, namely Beckett & Kay (84.84%); South East Leasehold (89.73%), Austin Gray (85.19%) and Andrew Pridell (85.82%). He describes the Nesbitt & Co graph as the best of a bad bunch. The graph is more consistent. It is based on a number of properties in NW London. It is non-mortgage dependent. The Tribunal notes that the graph is based on settlements in which Nesbitt & Co have been instructed. The firm act mainly for landlords (above 80%).
15. Were the Tribunal to prefer the RICS graphs, Mr Berger would support the use of the Nesbitt & Co graph. He notes that the figure is consistent with graphs produced by his previous firm, Moss Kaye, based on settlements and determinations for the period 1993 to 2005. The location of these properties are predominantly suburban London and to the north of the Thames.

Our Determination

16. Given the availability of local transactional evidence, the Tribunal prefers to rely on this evidence. It is only one transaction. However, the Tribunal accept that it is the best evidence that is available.
17. The Tribunal are satisfied that the proximity of the railway line and its associated noise nuisance to 230 Empire Court would have a significant adverse effect upon its value. We are satisfied that this would be substantially more than the £5,000 suggested by Mr Berger. We prefer the figure of 7.5% suggested by Mr Shapiro.
18. The Tribunal is also satisfied that an adjustment must be made for the absence of rights under the Act. In *Mundy* (at [135]), the UT were referred to a number of UT decisions in which deductions were made for "Act Rights". The deductions ranged from 25% where the unexpired term

was 17.8 years to 7.5% where the unexpired term was 44 years. We accept that the longer the unexpired term, the lesser the deduction that should be made, the existence of "Act Rights" being a less significant factor in the mind of the hypothetical purchaser. We are dealing with an unexpired term of 61 years. We are satisfied that the figure of 4.67% proposed by Mr Shapiro is in the right range.

19. The Tribunal therefore adopts the figure of 78.65% proposed by Mr Shapiro. This figure is slightly higher than the figure of 75.91% included by Mr Shapiro in his calculation at p.203. This reflects the agreed reduction in the extended lease value of the subject flat.

Conclusion

20. We make the following determinations on the three issues in dispute:
 - (i) Relativity is to be taken as 78.65%;
 - (ii) We determine the premium payable to be £29,136. Our working calculation is set out in the Appendix.

Robert Latham
Tribunal Judge
29 September 2016

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.

APPENDIX A

230 Empire Court, North End Road, Wembley, London HA9 0AL The Tribunal's Valuation

Assessment of the premium for a lease extension In accordance with Leasehold Reform, Housing and Urban Development Act 1993 DD/LON/00AE/OLR/2016/0280

Components

Valuation date:	26 th June 2015	
Yield for ground rent:	6.5%	
Deferment rate:	5.0%	
Long lease value	£207,500	
Freehold value	£209,600	
Existing leasehold value	£164,860	
Relativity	78.65 %	
Unexpired Term	59.73 years	
Ground rent currently receivable	£105	
Capitalised @ 6.5% for 12.2 years	8.249	£866
Rising to:	£140	
Capitalised @ 6.5% for 21 years	11.285	
Deferred 12.2 years @ 6.5%	0.463	£731
Rising to:	£280	
Capitalised @ 6.5% for 24 years	12.489	
Deferred 33.2 years @ 6.5%	0.124	<u>£434</u>
		<u>£2,031</u>
Reversion to:	£209,600	
Deferred 59.73 years @5%	0.0542	<u>£11,360</u>
Freeholder's Present Interest		<u>£13,391</u>
Landlords interest after grant of new lease	£209,600	
PV of £1 after reversion @ 5% 0.00067	£140	
Marriage Value		
Freehold value	£209,600	
Plus freehold reversion	140	
	£209,740	
Landlord's existing value	£13,391	
Existing leasehold value	£164,860	<u>£178,251</u>
		£31,489
Freeholders share @ 50%		£15,745
LEASE EXTENSION PREMIUM		<u>£29,136</u>