



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

Case Reference : CHI/29UN/OLR/2020/0087

Property : Flat 8F Arlington House, All Saints Avenue,
Margate, Kent CT9 1XP

Applicant : Dhamia Al-Jabir

Representative : YVA Solicitors LLP

Respondent 1 : Thanet District Council

Representative : Wallace LLP

Respondent 2 : Metropolitan Property Realizations Ltd

Representative : Wallace LLP

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

Tribunal Member(s) : Mr W H Gater FRICS MCI Arb
Mr Richard Athow FRICS MIRPM

Date of Decision : 16 November 2020

Decision

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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 **£20,715** to be apportioned between the two respondents as shown below.

Background

1. This is an application to determine the premium and other terms of the acquisition.
2. Directions were made on 13 May 2020 setting out a timetable for the exchange of written submissions on the matters not agreed.
3. The matter was determined by video conference hearing on 30 September 2020 and the parties were permitted to call expert evidence.
4. Valuation reports have been received on behalf of both parties. Mr Richard Murphy Dip Surv, MRICS, instructed by the Applicant and Mr Robin Delworth Sharp B.Sc. FRICS instructed by the Respondents.
5. 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. One member of the Tribunal, Mr Athow has knowledge of the building and its environs from sitting on a previous case at 10H Arlington House.
6. The flat is currently held on an occupational lease for a term of 114 years, commencing on 1 October 1961. The First Respondent owns the reversion to the block, the Second Respondent owns the intermediary or head lease from 1 October 1961 for a term of 199 years and the balance remaining on that lease at the valuation date was 140.96 years. At the end of the occupational lease there will therefore be 85 years remaining on the head lease.
7. The following were agreed between the parties:
 - Date of valuation 15th of October 2019
 - Date lease commenced 1 October 1961
 - Lease term 114 years
 - Unexpired term at valuation date 55.96 years
 - Ground rent: originally £60 until 25th of March 2027, rising to £90 per annum for the next 33 years and finally rising £120 per annum for the remainder of the term.
 - Accommodation of subject property: Reception, Kitchen, Bathroom and two Bedrooms.
 - Capitalisation rate 6%
 - Deferment rate on head lease 5.5%

- Deferment rate on freehold 5%
- Relativity reversion to unimproved extended leasehold value 99%
- Floor area 58.5 m².

8. The following are disputed

- Relativity of current leasehold interest to reversion
- Long leasehold (unimproved) interest.

The Premises

9. Arlington House is a 1960's tower block, occupying a prominent position on the Margate seafront. It was built as part of a larger development which includes Arlington Square, comprising some 50 shop units and a large multi-storey car park. At present the shops are vacant and boarded up. There are 142 flats over 18 floors. On the ground floor beyond the entrance area is a porter's office and store room and a meter room, and there is external access to a bin store, and the pump room. There are fire escape staircases at both end of the building. On the roof area are several communications masts.

10. The subject property comprises a purpose built flat on the 8th floor.

The Hearing

11. The hearing was attended by Mr Sharpe and Mr Murphy.

12. Four preliminary points were raised at the commencement of the hearing, listed A-D below.

- A. The Tribunal noted that it had received two documents from the applicants the evening before. One was a 10-year plan and the other was an email marked Without Prejudice. Each party was asked to comment on the matter as a preliminary issue.

Regarding the 10-year plan Mr Murphy felt that it added a dimension to the proceedings and that he had not have access to that document before.

Mr Sharpe said that this was a very late production of a document. He had no prior knowledge of its existence and had not had an opportunity to consider it. It had not been referred to in previous correspondence. It is not signed or dated and may be privileged.

Regarding the email Mr Murphy indicated that he sent it between 5.30pm and 6pm the evening before. He felt that it contained useful information.

Mr Sharpe said that this was a without prejudice email used in the course of negotiation.

The Tribunal held as a preliminary issue that the papers were presented too late, they were contrary to the directions not to submit piecemeal documents outside of the bundle and neither the Tribunal or Respondent had enough time to consider them. One was a privileged Without Prejudice document. No effective argument had been made that they added significantly to the case and the Tribunal therefore determined that these two documents were inadmissible.

- B. The Tribunal sought clarification from Mr Sharpe as to the status of Deritend referred to on the front sheet of his expert report. He confirmed that this was a mistake and that his instructions came from Metropolitan Property Realizations Ltd.
- C. The Tribunal noted the case of Deritend Investments (Birkdale)Ltd v Treskonova [2020] UKUT 164 (LC). (Deritend) reported on 1 July and that Mr Sharpe had appeared as an expert witness in that case. Neither party had mentioned the case specifically in their evidence. The Tribunal considered that this is an important Upper Tribunal decision and as such may reflect on it in its determination. The Tribunal gave an opportunity for each expert to comment on the matter and to request an adjournment to consider submissions about the case.

Mr Murphy said that he had not mentioned this case other than in the generality about the average relativity of sales outside of the London area and he was aware of the case. He had referred to the percentage used in that case in adopting relativity.

Mr Sharpe confirmed that he had acted in the Deritend case. He gave the address as 5 Mansard Manor, Christchurch Park, Sutton. He has not referred to it as in that case there was no market evidence whereas in this case there is such information available. Deritend adopted the average of the G Eve and Savills graphs but would not apply the B and K data. In this case there is market evidence.

The Tribunal made clear that it will consider this Deritend case in making the determination. Both parties confirmed that they were content not to seek an adjournment.

- D. The Tribunal noted the apparent dual status of the representatives for the Applicant and Respondent i.e. that they may be advocates and expert witnesses. The Tribunal asked the parties to ensure that they make clear to the Tribunal in what capacity they were speaking at any given time. It was to be assumed that they were addressing the Tribunal as expert witnesses unless told to the contrary. In the event neither expert addressed the Tribunal as an advocate.

Evidence and Decision

Long leasehold values.

13. Evidence from Mr Murphy as expert witness for the applicants said that every flat in the block was different due to different floor levels views and aspect. The developers are trying to give every flat a view of the beach. On the west side you

need to be on above the 10th floor for views. On the east side flats over the fifth-floor level have a view.

14. The front G and H flats have an additional window that looks towards the sea. This gives a flat flexibility for use of the bedroom. Front flats are bigger and better, but this does not make a difference to values. All get a view. Additional windows facing North are very exposed. He is not inclined to increase values for G and H addition.
15. It is difficult to value a long lease. The head lessee has retained 36 flats. 65% of the flats are short-term and there are only 14 long leases. There are only two sales of long leasehold flats available as evidence. He has taken the sale prices and adjusted them by the house price index for Thanet. This sales evidence cannot be ignored as it is rare.
16. Flat 4H. He has no knowledge of the inside of the flat but assumes that was sold and improved.
17. For Flat 18H there are photographs available. It is a penthouse flat which has been much improved. It has a bedroom that looks onto the sea. £170,000 was very high, in fact the most ever paid for a flat here, and he therefore adjusted by £25,000 to bring its value back to that of a flat in average condition. The sale date here was November 2017 whereas the valuation date for the subject property is October 2019.
18. In his written evidence Mr Murphy analyses the two long leasehold sales and goes on to build a matrix of sales data by incorporating short leasehold sales evidence and seeking to establish a pattern of adjustments for such things as floor level, length of term remaining and aspect.
19. He placed a value of £116,594 for the unimproved long leasehold value.
20. Mr Sharpe in cross-examining Mr Murphy questioned the adjustment for quality asking whether the Formica in the kitchen could be described as top of the range and could the kitchen not be bought from a DIY outlet? Mr Murphy said that this was a trendy retro look and a matter of personal taste. The parquet floors were of good quality.
21. Mr Sharpe asked whether this was the conversion of a three-bedroom flat into a one-bedroom flat and was this the universal type of use for these flats? Mr Murphy answered that young professionals leaving London found such a flat appealing. Families interested in such a flat would be aware that there was flexibility by adding partitions to bring it back to three-bedroom flat. He agreed there was only a small window to the bedroom but there was a good view.
22. Mr Sharpe asked if the lower flats were affected by Dreamland the amusement park nearby: he answered this is a matter of personal preference. Some occupiers enjoy seeing the local festivals free.
23. Evidence from Mr Sharpe, on long leasehold values, as expert witness.
24. There are only two sales; flat 4H at £115,000 and £18 H at £170,000.

25. In his written evidence he set out adjustments to the comparable sale prices of flats 4H and 10 H, allowing for differential size, floor position, condition and sale date. He analysed these factors in three calculations, giving a range of values which, he then averaged before rounding down for uncertainty.
26. The area for 10H had not been agreed when he appeared at the previous hearing. He considers that these flats have a smaller floor area than 8F.
27. The subject flat 8F was measured by him is larger than has been agreed but he settled on the lower figure in order to dispose of the case.
28. Regarding floor level there is no great difference going from the 10th to the 15th floor. The Penthouse level may be worth a little more. The top floor is a service floor.
29. He made adjustments for various factors. Where a flat was tenanted, he added back 5% to allow for the diminution in value.
30. Regarding condition he adjusted the price of 18 H by 7.5% and concluded that £25,000 was too much.
31. The style of the refurbished flat 18 H is not to everyone's taste and it had lost at least one bedroom. The subject flat is bigger and therefore should be analysed at a lower rate per square foot above the 10th floor.
32. Dreamland has less effect on the flats at upper levels. Below the tenth floor he makes an adjustment of 2.5% per floor for the proximity of Dreamland.
33. He checked his adjustments by making a straight-line analysis of the two comparables as shown in his evidence.
34. He then groups the values £142,000 -£145,000 giving an average of £144,133 which is then reduced by 2.5% to allow for the uncertainty referred to above. His final valuation of the is £140,500 with a near Freehold value of £141,919.
35. Mr Murphy in cross-examining, Mr Sharpe asked was there a measured area difference between you and the surveyor acting for the other party on flat 10h. The other surveyor's area was 616 ft.². When asked by Mr Murphy for the area had he settled on for 10 H Mr Sharpe said that he did not have the information to hand.
36. Mr Sharpe confirmed that the Tribunal in 10h found that all flat Hs were the same size Mr Murphy referred to the plan and asked whether H did not look smaller than type F. Mr Sharpe answered that his evidence is H is a smaller flat.
37. On balance the Tribunal prefers Mr Sharp's conclusion as to the value of the long leasehold. Whilst the allowance for variables such as floor level are open to question the robust conclusion of a valuation of £140,500 achieves a certain sense in comparison with the two long lease comparables and the sales of the short leases. Mr Murphy has given a great deal of thought to his matrix of evidence but in the final analysis the resultant valuation seems low and is based on a large range of assumptions, some subjective.

38. The tribunal therefore adopts £140,500 as the long lease value which using the agreed relativity gives a virtual freehold value of £141,919.

Short Leasehold Values

39. Mr Murphy giving evidence. There have been a lot of sales of short leasehold flats. Adjustments were made by him for length of lease remaining, on a straight-line basis, which he refers to as gearing.
40. An adjustment for the “No Act” was made by using the Savills 2015 and 2016 graphs showing the differential.
41. He confirmed that the differential was a percentage of a figure rather than simple deduction between two percentages.
42. He referred to the table of short leases in his evidence. He had not adjusted for floors or aspect. The photographs available give explanations as to why some adjustments have been made.
43. Under cross-examination, Mr Murphy confirmed that some of the flats in the schedule are towards the rear on the East and the West sides. All sales are within the last three and half years. Asked whether the West was the best aspect he replied that the evidence does not support that, and his evidence discusses this. He considers it to be a matter of personal preference.
44. Asked whether it is correct to compare one and two bedroom flat and use it to prove evidence he said that the number beds do not add value. Both flats are believed to be a similar gross size but he cannot be sure. He confirmed that he had been in a type A or B flat but only very briefly.
45. Asked whether his adjustments were subjective, he pointed out that there seemed to be agreement on adjusting for house price inflation and length of lease. He felt that he had to adjust the flats located front /middle /back as there is no other way. When comparing very different flats comparative adjustments must be made.
46. When asked whether the sale price of 16 F showing 87.4% relativity to FHVP proved that his evidence was inconsistent Mr Murphy said that different people have a range of tastes and are happy to pay higher sums in some instances.
47. He agreed that the average would be lower if he took out 16H as an outlier.
48. He confirmed that he had added, on p109, a table of premiums paid for lease extensions in the past after reports had been exchanged. The HPI was varying and he corrected the figures with the new Land Registry data.
49. Asked why he had not included details of the £28,500 premium for flat 16 F sent by Mr Sharp, which would have increased average prices, Mr Murphy said that this was not, at the time, on the Land Registry database and was not proven. It was not significant to the matter.
50. Mr Murphy values the short leasehold interest at £ 88,706 being 75.32 % of his long leasehold value of £116,594.

51. Mr Sharpe's evidence on short leasehold values. He has concentrated on F type flats due to the uncertainty around the variables. He adjusted for these variables, adjusting by 1.25% per floor for floors 18 down to 10 and by 2.5% for floors 8 and below. This reflects the noise and festivals disturbance from Dreamland. The photographs show a big difference between east and west elevations. The east has Dreamland.
52. The resultant average price of £100,954 is adjusted for uncertainty to £106,002.
53. The decision in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223(Mundy) says that the value of the 1993 Act rights to be ignored are significant. Not all Tribunals have agreed with his views. In other cases, graphs are used in the Prime Central London area, but Margate is not the same. The effect of the rights here is larger. No flats here are bought on a mortgage. He referred to RICS guidance on coastal towns and the problems associated with mainstream lenders and therefore the Act is more beneficial. On questioning he agreed that this was information gleaned from Property Week magazine rather than from the RICS.
54. The Savills / Gerald Eve graphs were used in *Deritend*, but the Upper tribunal rejected B and K. Mr Sharp maintains that B and K is valid here as it is the only graph updated since the 2008 financial crash. He regards B and K's graphs as reliable. He arrived at the 67% adjustment compared to 68.4% for the market. That level of relativity is not unknown. The LVT decision in *Bishopbriggs Court in Horsham* was similar. Whilst there may be shortcomings in methodology the findings are built on analysis.
55. He confirmed that he had relied on the Gerald Eve Prime Central London graphs for cases outside of London when there is no short leasehold sales evidence.
56. Regarding the intermediate leaseholder's interest there is no sales graph for flats with over 85 years remaining. There is no need to adjust for a sinking fund because the landlord can recoup capital by the valuable reversion.
57. Cross examined by Mr Murphy, Mr Sharpe said that Google shows events to end at 2 AM, but when questioned was not aware that there are no events midweek apart from in school holidays.
58. He was aware that free tickets to Dreamland are given to residents, but their value is subjective.
59. Asked about the contradiction of using Gerald Eve graphs outside of London whilst expressing preference for the B and K graph he said that he had made settlements below the Gerald Eve PCL graphs in other cases.
60. Where there is no evidence available outside London caselaw points to use of the Gerald Eve graph but post Mundy we also look at the Act rights which are important here and have more effect. I undertake market analysis of relativity and where there are no comparables follow earlier decisions. In future I'll be looking at G Eve and Savills to get data on relativity.
61. Asked whether he used G Eve and Savills outside Prime Central London (PCL) but not in considering the no act differential, he replied that he used that and other

data. The Tribunal has not always liked my reference to other Tribunal decisions with evidence in lower tier cases and I use B and K 's graphs.

62. Mr Murphy asked why, if Deritend rejected B and K, you have not done so here. Mr Sharp replied that in this case he can go straight to market evidence and compare graphs. The Upper Tribunal found that the B and K graph was not appropriate in that case.
63. Summarising Mr Murphy said he used two sales on long leases and adjusted for floor levels. For short leases he created a matrix of sales comparables and for relativity he chose the Gerald Eve and Savills graphs.
64. Mr Sharpe said that he looked at the very limited long leasehold sales evidence and considered the differential factors such as the floor levels. He then allowed a contingency for uncertainty.
65. He felt that Mr Murphy's matrix adds to uncertainty. He concentrated on type F flats to assess short leasehold values.

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66. 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 in 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.

67. 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 assists. There is an element of subjectivity and mathematics in an imperfect sales world.
68. On balance the tribunal prefers the approach of Mr Sharp and determines the value of the long leasehold at £140,500 with the near freehold value at £ 141,919.
69. 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.
70. Within the bundle we were 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

71. The tribunal considered the evidence from both experts on relativity and the use of graphs, particularly in the light of the Deritend case referred to above.
72. The tribunal was referred in particular to Mundy. In that case it was made clear 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 PCL. It rejected the use of the Beckett and Kay 2017 graph.
73. 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. For the reasons we have already explained we do not endorse Mr Sharp's averaging of the resulting relativity figure by reference to the Beckett and Kay 2017 graph.

74. In this case there is ample evidence of short lease sales but very limited, 2-year-old, evidence of long lease sales.
75. In the Tribunal's view the appropriate course, post Deritend is to do the best by first examining the analysis and extrapolation of sales made in evidence. It would then be in order to cross refer the results for sense using the appropriate graphs.
76. Therefore, using the starting point of £141,919 we go on to consider the short leasehold value. The extrapolated evidence and simple examination of sales indicates that some comparatively high prices for short leases have been achieved, despite the lack of mortgageability and issues at the block. For example, 15g sold for £130,000 and 10e sold for 140,000 against the highest value ever achieved for a long lease of £170,000 for 14h.
77. The Tribunal considered the Savills and Gerald Eve 2016 graphs which point to a relativity of 75.23% for Gerald Eve 2016 and for Savills 81.38% enfranchiseable /75.47% unenfranchiseable.
78. Mr Murphy's relativity percentage of 75.32%, if applied to £141,919 gives a short leasehold value of £106,983.
79. As a secondary check, applying the Savills *enfranchiseable* figure of 81.38% gives a value of £115,493. Cross checking this with actual sales this figure sits well with the enfranchiseable short lease sales evidence.

80. Accordingly, the Tribunal adopts Mr Murphy's relativity percentage of 75.32% and determines the value of the short leasehold interest, excluding the Act rights at £106,983.

Relative value of the intermediate landlord's reversionary interest.

81. The Tribunal, reflecting on the decision in Deritend, prefers Mr Murphy's evidence on relativity for the 85 year long reversionary leasehold interest. It therefore adopts the relativity of 91.70% based on the Gerald Eve and Savills graphs. When applied to the determined Freehold value of £141,919 this gives a valuation of the intermediate interest at £130,139.

Determination

82. Based on the findings above the Tribunal determines the premium payable as £20,715, of which £74 is payable to the first respondent and £ 20,641 is payable to the second respondent. The tribunal's calculation is shown below.

83. The Application required the Tribunal to determine "the other terms of acquisition that remain in dispute" A travelling form of Lease was included in the bundle [71] but neither the hearing bundle or the parties representatives made any reference to it.

84. In the absence of the parties' representations the Tribunal limits its determination to the premium payable.

W H Gater FRICS MCI Arb

CHI/29UN/OLR/2020/0087

Flat 8F Arlington House, All Saints Avenue, Margate, Kent CT9 1XP

Calculation of premium payable.

<u>Diminution of Head lessee Interest:</u>				
<u>Term 1</u>				
Ground rent		£60.00		
YP for 7.448 years @ 6%		5.87553	£352	
<u>Term 2</u>				
Ground rent		£90.00		
YP for 33 years @ 6%,		9.2136		
deferred 7.46 years			£829	
<u>Term 3</u>				
Ground rent		£120.00		Head lessee term value
YP for 15.5 years @ 6%,		0.93817		
deferred 40.46 years			£113	£1,294
<u>Head Lease Reversion</u>				
Leasehold value of flat with 85 years unexpired 91.7% of 141919		£130,139		Head Lessee Reversion value
PV £1 in 55.958 years @ 5.5%		0.05	£6,506	£6,506
			Total Head Lessee interest	£7,800
<u>Diminution of FH reversion: Present</u>				
Freehold value of flat		£141,949		(extra 5 years due to 90 v 85-year reversion)
PV £1 in 140.958 years @ 5%		0.00103	<u>£146.20</u>	

<u>Diminution of FH reversion:</u>				
<u>Proposed</u>				
Freehold value of flat		£141,949		
PV £1 in 145.958 years @ 5%		0.0008	<u>£113.55</u>	
			Loss to Freeholder	£28
		Diminution of both Landlord's reversion:		£7,828
<u>Landlords Share of Marriage Value</u>				
Long leasehold value of flat	145.958 years	£140,500		
Landlord's proposed interest		£113.55	<u>£140,613.55</u>	
LESS				
Short lease value of flat		£106,893		
Head Lessee's current interest		<u>£7,800.00</u>		
Freeholder Present Interest		146.20	<u>£114,839.20</u>	
Marriage Value			£25,774.35	
		Freeholders and Head Lessee share @ 50%		£12,887.18
		Add FH and Head Lessee Present Values		£7,828
	Enfranchisement price			£20,715

Division of marriage value				
			Head Lessee	£7,800
	7800/7828 x 12887.18=12841		Head Lessee Marriage Value	£12,841
			Total payable to Head Lessee	£20,641
			FH	£28
	28/7828x12887.18= 46		FH Marriage Value	£46
			Total payable to FH	£74

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.