



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

| | |
|----------------------------|---|
| Case Reference | : CHI/45UC/OLR/2020/0049 |
| Property | : 50 The Grangeway Rustington Littlehampton BN16 2QS |
| Applicants | : Graham Incledon-Jones Karen Gail Incledon-Jones |
| Representative | : Bate & Albon Solicitors |
| Expert Witness | : Mr Julian Wilkins MRICS |
| Respondent | : Daejan Properties Ltd |
| Representative | : Wallace LLP Solicitors |
| Expert Witness | : Mr R D Sharp BSc FRICS |
| Type of Application | : Determination of premium section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 |
| Tribunal Member(s) | : Mr B H R Simms FRICS (Chair) Mr B Bourne MRICS MCI Arb (Valuer Member) |
| Date of Hearing | : 11 December 2020 By Video Link |
| Date of Decision | : 14 January 2021 |

DECISION

Decisions of the Tribunal

1. The Tribunal determines the premium payable for the new lease of 50 The Grangeway, Rustington (“the property”) at £41,153 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”).
2. The determination of reasonable costs application was stayed pending determination of the substantive issues by Directions dated 11 June 2020.

The Application

3. The Applicant seeks a determination of premium for the acquisition of a new lease pursuant to Section 48 of the Leasehold Reform, Household and Urban Development Act 1993.
4. On 05 September 2019 the Applicant served a notice to exercise the right to acquire a new lease of the property at a premium of £29,875.
5. On 14 November 2019 the Landlord’s solicitor issued a counter notice admitting the Applicant’s right to a new lease, but disputing the Applicant’s proposals in respect of the premium and the terms of the new lease, proposing a price of £61,785
6. The sole matter in dispute was the premium. The parties’ solicitors had agreed the terms of the new lease.
7. At the hearing the Applicant’s representative proposed a premium of £34,334 as against £51,428 proposed by the landlord’s representative.

The Hearing

8. The parties’ expert witnesses, Mr Wilkins (for the Applicant) and Mr Sharp (for the Respondent) gave evidence and represented their respective parties at the hearing.
9. The Applicant’s solicitors had prepared a bundle [page numbers] which contained a Memorandum of Agreed matters signed by the expert witnesses [83-84].
10. Prior to the hearing the parties had submitted supplemental representations and revised valuations following the agreed sale of 51 The Grangeway. On hearing the parties this additional evidence was admitted.
11. Directions for the conduct of the case were issued on 11 June 2020 with Further Directions on 25 June and 15 October [13-20]. The case was conducted under special arrangements to allow for the Covid 19 pandemic and the relevant Practice Directions. With the parties consent, the proceedings were conducted without an inspection by the Tribunal members and the hearing was conducted by secure video link.

Background

12. 50 The Grangeway is a ground floor flat with garden areas to the front and rear and has an agreed floor area of 55.87 m². The block dates from the 1930s and is built of brick and tile.
13. The flat has its own entrance and the accommodation originally comprised a hall, living room, kitchen, one single and one double bedroom and a bathroom with W.C. The experts supplied various photographs and plans and the Tribunal members viewed the property online using various public platforms.
14. The flat is held under two leases combined in title WSX 215928 the first dated 06 August 1984 and the second dated 13 April 1972 for a section of the rear garden. Both leases are for the term of 99 years from 24 June 1970. It is agreed that the unexpired lease term is 49.796 years. The valuation date is agreed at 06 September 2019 with the existing ground rent of £100 p.a. increasing to £125 p.a. in 16.796 years from the valuation date.
15. The terms of the new lease to be granted are agreed.

The Law

16. The statutory provisions dealing with the premium payable by the Applicant for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the Act. The premium is the aggregate of
 - The diminution in value of the landlord's interest in the tenant's flat
 - The landlord's share of the marriage value.
 - Any amount of compensation payable to the landlord.
17. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:
 - The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
 - The value of his interest in the flat once the new lease is granted.
18. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.
19. The value of the landlord's interest comprises two elements:
 - The right to receive rent under the existing lease for the remainder of the term (*The term*).

- The right to vacant possession at the end of term subject to the tenant's right to remain in occupation (*The reversion*).
20. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's interests after the new lease had been granted, and then deducting the corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.
21. Paragraph 5 of schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

The Issues

22. The matters agreed between the parties in respect of the premium were as follows:
- Valuation date: 06 September 2019.
 - Unexpired term: 49.796 years.
 - Deferment Rate: 5 per cent.
 - 1% differential between the Leasehold Vacant Possession Value and the Freeholder Vacant Possession Value.
 - There are no improvements of value to be considered.
23. The matters remaining in dispute on which the valuers have not been able to reach agreement for the Tribunal to determine are:
- The capitalisation rate for the ground rent.
 - The long leasehold value of the property.
 - The relativity in connection with the calculation of the current lease value and marriage value.
 - The premium payable

Evidence and Consideration

24. The Tribunal considered each issue in turn.
25. On the question of the capitalisation rate there was little evidence available to the Tribunal. Mr Wilkins considered that 7% was appropriate as he had agreed this rate on other enfranchisement cases and this rate is generally accepted for a lease with modest ground rent reviews. He summarised the accepted factors which would influence the appropriate rate citing Lands Tribunal and a FTT case in support. Because of the relatively low ground rent and 33 year reviews he concludes that 7% is the correct rate.

26. Mr Sharp referred the Tribunal to the current very low interest rates and that the income is secure and risk of non-payment is low. He considers that 6% is appropriate.
27. Doing the best it can, the Tribunal uses an average 6.5% in its calculation.
28. Now turning to the value of the current lease both parties agreed to follow the approach taken in the Upper Tribunal case *Sloane Stanley v Mundy* (“*Mundy*”)¹ and followed in several subsequent Upper Tribunal decisions. It was the judgement in *Mundy* that, where market transactions at or around the valuation date are available these should be the starting point for determining relativity. Mr Wilkins accepts that there are no relevant transactions in the block as he dismisses No. 48 as unreliable and historic [5.08 @ 95]. Mr Sharp relies on the price agreed for No. 51 but see our comments at paragraphs 29 - 33 below. On this basis there are no relevant short lease market transactions.
29. In his original representation Mr Sharp at section 7 [361] referred to the flat upstairs, No. 51, which was on the market and had been for some time at £175,000. He states that the marketing is not conclusive but is indicative of the market for short lease, but not as reliable as a recent sale. He goes on to adjust the figure for a sale without rights under the Act. Starting at £165,000 (his estimate of the likely sale price), he arrives at a “no act” figure of £146,850.
30. Subsequently it came to light that a sale had been agreed, but not contracted, at £170,000. Upon a request to the Tribunal the parties were given permission to submit further representations on this issue and at the hearing these were admitted [*see para 10 above*].
31. The Tribunal has given careful consideration whether this type of information should be taken into account in the valuation. Mr Wilkins is adamant that the amount accepted as an offer, subject to contract, cannot be proper evidence. Mr Sharp was not aware that this type of information has been used in other Tribunal determinations.
32. The Tribunal determines that although the information on the agreed price for 51 The Grangeway is interesting it would be wrong for it to form any part of the calculation of the premium payable or relativity.
33. The value can only be assessed by applying a percentage relativity to the virtual freehold value by using published graphs so first the long lease value has to be assessed.
34. Mr Wilkins assembled a schedule of seven nearby properties [113] which he considered were comparable to the subject property. He stated that they were geographically close and all had to a greater or lesser extent similar facilities. Where there was a difference between the date of the transaction and the valuation date, he made adjustments using the Land Registry Index. He also made adjustments for size, location, parking or garages, general condition, heating etc. He favours the first comparable at 43 The Grangeway with his adjusted valuation of £200,454 but if the first five comparables are used with his adjustments these show an average of £196,866.

¹ The Trustees of the Sloane Stanley Estate and Adrian Howard Mundy [2016] UKUT 223 (LC)

35. Taking account of all other relevant factors Mr Wilkins concludes that £200,000 would be his assessment of the value of the property with an extended lease.
36. Mr Sharp took issue with the amounts Mr Wilkins had used for adjustments and raised these concerns at the hearing. He believed that the location of some of the comparables were more remote from the village centre and as such were less valuable. Mr Wilkins thought that this made no difference. Mr Sharp questioned the deduction for the cost of a lease extension, Mr Wilkins pointed out that this included costs and where the lease length was over 80 years it made little difference. Mr Sharp also took the view that with the government's intention to stop gas heating from 2025 the differential by comparison with electric heating was minimal. Mr Wilkins did not agree.
37. Mr Sharp chose to rely on only two comparables but Mr Wilkins considered this to be 'cherry picking'. Mr Sharp favoured 43 The Grangeway and, like Mr Wilkins, made a similar adjustment for date. He made different other adjustments however to take account of the first floor configuration which he considered was an advantage. He believed that the flat was not of better quality and no adjustments were needed for the garage and parking arrangements. The adjustments suggest a value of the property, with an extended lease with a peppercorn rent, of £239,000. He considers the next best comparable to be No. 34 but as the sale was in 2015 it is very historic. None-the-less he makes an index adjustment and some other adjustments to arrive at a valuation of £247,802 for it. He then takes an average of 43 and 34 only to calculate the value of the subject property with an extended lease at £249,959.
38. When making his additional representations Mr Sharp identified revised Land Registry Index figures which involved minor adjustments to his comparables. 43 The Grangeway should be revised to £233,949 and 34 The Grangeway revised to £247,591. The consequence is that he revises his value of the virtual freehold to £245,565.
39. Mr Wilkins questioned Mr Sharp's use of limited comparables to produce an answer favourable to his client's case. Although probably not deliberate Mr Sharp's approach seems contrary to the usual valuation approach. We do not agree that any of the five comparables used by Mr Wilkins should be excluded as they all are located within a reasonable locality to the subject property. We do, however, find that some of the adjustments both experts make to the sale figures for each comparable are open for discussion. This is reflected in the wide disparity between the two figures contended i.e. £200,000 by Mr Wilkins and £245,565 by Mr Sharp. Neither expert gave detailed information regarding their calculations of adjustments for such things as, locality, parking or garaging, modernisation, floor level, heating etc. There was a general debate during oral evidence and cross examination. We were particularly concerned by the severe deductions made by Mr Wilkins when adjusting the price for No 43. We also felt that the use, by Mr Sharp, of an adjusted price for No. 34, a very historical comparable, as his only alternative comparable affected the end figure too substantially.
40. **Having regard to its findings in paras 33 to 39 the Tribunal Determines the extended lease value at £215,000 and £217,150 for the virtual freehold value of the landlord's interest in the flat applying the agreed 1% differential.**

41. Mr Wilkins then addresses which of the graphs are, in his opinion, the correct ones to use. He refers expressly to “Oliyide”² and “Zucconi”³ and other cases. He believes that these cases have been interpreted incorrectly to favour reference only to Savills and Gerald Eve graphs. Prior to “Mundy” he would have considered the five Greater London and South East relativity graphs contained in the 2009 RICS Relativity publication⁴ which of these he favours the Andrew Pridell graph⁵ (“Pridell”). When appearing in the FTT case Flat 1 Woodside Court Littlehampton⁶ he was able to demonstrate that relativity calculated from market evidence was within 0.5% of the Pridell graph for a term of 49.54 years. He says that unfortunately there are no Upper Tribunal cases relating to properties on the South Coast.
42. Mr Wilkins accepts that there has been some change in relativity since the date that the RICS graphs were published. He makes adjustments for the later date based on the relative differences now published with the updated Savills and Gerald Eve graphs showing an average difference of 4.07%. This would give a revised “Pridell” figure of 74.44%. which is the figure he adopts to calculate the marriage value.
43. Mr Sharp identifies the graphs used in Mundy as Savills and Gerald Eve but these graphs relate to Prime Central London (“PCL”). The “Mansard” case⁷ endorsed the use of PCL graphs outside the centre. If other suburban graphs are to be considered he favours Beckett & Kay (“Beckett”) showing 62% for the unexpired term. Savills is 70.74% exclusive of rights and Gerald Eve 70.33%. His opinion is that there would be lower relativity in Rustington once the acts Rights effect is removed and uses the Beckett graph to allow for this.
44. Mr Sharp averages the PCL graphs at 70.535% and takes Beckett at 61% making an average of these two figures of 65.77% in his calculation.
45. When considering the different approaches of the experts there does seem to be something amiss with the graphs selected to try and shade distinguish the PCL graph figures to allow for a property outside central London. Beckett at 61% and Pridell at 74.44%. At least Mr Sharp has recognised the established use of PCL graphs but Mr Wilkins seems to have chosen to ignore any assistance from the PCL figures. Neither expert has made a case for any real difference between relativities outside PCL. The Pridell figure is now out of date but to suggest that it should be adjusted using a PCL differential seems counter-intuitive. Mr Wilkins points out the deficiencies of the Beckett figures.
46. As indicated by the decided cases we can find no compelling evidence to adjust the established graphs and we therefore adopt the average of the Savills and Gerald Eve 2016 graphs at 70.535%.
47. **Having regard to its finding at paras 41 – 46 above the Tribunal applies relativity the determined relativity to the virtual freehold value to determine a short lease value of £153,167.**

² Mrs Ohunene Oliyide v Elmbirch Properties Plc UKUT LRA/802/018

³ Trustees of Barry and Peggy High Foundation v ClaudioZucconi and Mirella Zanre UKUT LRA/138/2018

⁴ RICS Research Leasehold Reform: Graphs of Relativity October 2009

⁵ Andrew Pridell Associates Ltd August 2008

⁶ B D Gould & M F Gould v Longacre Securities Ltd CHI/45UC/OLR/2017/0069

⁷ Deritend Investments (Birkdale) Limited v Ms Kornella Treskonova UKUT LRA/123/2019

The Tribunal's decision

48. The Tribunal determines the premium payable for the new lease of 50 The Grangeway, Rustington, West Sussex at £41,153.00 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993.

49. The Tribunal's calculation is set out below:

Address 50 Grangeway, RUSTINGTON

Facts used

| | | | | | |
|---|----------|-----|------------|---------|--|
| Value 'Share of freehold' | £217,150 | +1% | | | |
| Value of new very long lease (unimproved) | £215,000 | | | | |
| Value of existing lease (unimproved) | £153,167 | | Relativity | 70.535% | |
| Valuation date | 05/09/19 | | | | |
| Yield | 6.50% | | | | |
| deferred yield | 5.00% | | | | |
| Unexpired term at valuation date | 49.80 | yrs | | | |

Value of landlord's interest

Capitalise ground rent for current term id rent for current term

| | | | | | | |
|------|-------|-------------|-------------|-----------------|----------------|------------------|
| | | | Ground rent | £100.00 | | |
| YP | 6.50% | 16.83 years | | <u>10.05381</u> | 1,005 | |
| | | | Increase to | £125.00 | | |
| YP | 6.50% | 33.00 years | | 13.45909 | | |
| x PV | 6.50% | 16.83 years | | <u>0.34650</u> | <u>4.66360</u> | 583 1,588 |

plus Landord's net reversion

| | | | | | | |
|------|-------|-------------|------------------------------------|-----------------|---------------|---------------|
| | | | Capital value of share of freehold | £217,150 | | |
| x PV | 5.00% | 49.80 years | | <u>0.088059</u> | 19,122 | |
| | | | LESS eventual reversion | £217,150 | | |
| x PV | 5.00% | 139.8 years | | <u>0.001091</u> | 237 | 18,885 |

Value of landlord's interest **20,473**

Landlord's share of marriage value

| | | | | | |
|-------------|--|---|---------------|----------------|--|
| | | Capital value of new extended lease | 215,000 | | |
| | | Value of landlord's interest after grant of new lease | <u>237</u> | 215,237 | |
| Less | | Capital value of existing lease | 153,167 | | |
| | | Value of landlord's interest lost | <u>20,710</u> | 173,877 | |
| | | Marriage value | | <u>41,360</u> | |

Landlord's share of marriage value at 50% **20,680**

Compensation nil

Price payable **£41,153**

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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