



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/45UF/OLR/2021/0073**

Property : **28 Bishopric Court,
Horsham,
Sussex RH12 1TJ**

Applicant : **Elsbeth Laura Thompson and Helen Amy
Thompson**

Represented by : **Julian Wilkins MRICS (expert & advocate)**

Respondents : **(1) Brickfield Properties Ltd.
Represented by Robin Sharp BSc FRICS (expert & advocate)
(2) City & County Properties Ltd.
(freeholder)
(3) Fencott Ltd. (intermediate landlord)**

Date of Application : **17th May 2021**

Type of Application : **To determine the premium for the lease
extension of the property**

Tribunal : **Bruce Edgington (lawyer chair)
Johanne Coupe FRICS
Nigel Robinson FRICS**

Date & place of hearing: **23rd November 2021 as a video hearing
from Havant Justice Centre in view of
Covid pandemic restrictions**

DECISION

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1. The Tribunal determines that the premium for the lease extension shall be £22,543.00.

Reasons

2. This is an application for the Tribunal to determine the premium only of the lease extension for the property. The Tribunal issued its usual directions orders on the 30th June and the 26th July 2021 timetabling the case to a final hearing. The 2nd and 3rd Respondents, although served with copies of the application and other documents have taken no part in these proceedings and did not attend the hearing.

3. Bundles were delivered in accordance with the Tribunal's order. The following matters were agreed, namely the valuation date (5th December 2020), the unexpired term (55.3 years), the deferment rate (5%) and the capitalisation of ground rent (£530). It was clear that the only parts of the statutory 'equation' to be used for the calculation of the premium which were not agreed were the 'freehold' vacant possession value ("FHVP") and any relativity value.
4. No request has been made to consider whether any compensation is payable in accordance with paragraph 2 of Schedule 13 of the 1993 Act. It was also agreed, of necessity, that marriage value was relevant in view of the unexpired term. The end result of the valuers' conclusions is that the Applicants have asked for a premium of £22,543.00 and the 1st Respondent has asked for £32,575.00.

The Inspection

5. With the present pandemic, Tribunals do not usually inspect properties and as the agreed bundle has helpfully provided photographs and full descriptions of the property and its location, it was not felt that an inspection would have really assisted the members in making this determination.

The Lease

6. The existing term for the lease is 99 years commencing on the 25th March 1977.

The Law

7. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the 1993 Act. Paragraph 2 says that:-

“The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate 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

8. Both valuers argued, in effect, that the case of **The Trustees of the Sloane Stanley Estate v Mundy** [2016] UKUT 223 (LC) created a change in the way that relativity was to be considered with the Upper Tribunal giving guidance which was saying, in effect, that if there is direct market evidence of extended and unextended leases, this should be looked at first but that the various graphs and indices referred to before, could be considered to provide some sort of counterbalance or check. In the absence of any such direct market evidence, such graphs and indices should be used.

The Hearing

9. The hearing was attended by Mr. Julian Wilkins MRICS on behalf of the Applicants and Mr. Robin Sharp BSc FRICS on behalf of the 1st Respondent. They were very helpful to the Tribunal.

10. Although both representatives were the parties' advocates, they were also their expert witnesses. They gave evidence in turn and were cross examined by each other and the Tribunal members. The bulk of the evidence given was related to the respective expert's views about 3 comparables in the same block. Both agreed that this was an unusual situation in that the flats in this block were quite small in an area of quite large properties, the service charges were relatively high but the flats were close to shops and other facilities and, in particular, a railway station.
11. Both experts agreed that these factors made comparison with other properties in the locality outside the block in which the property is contained, irrelevant.
12. Mr. Sharp insisted that in respect of relativity, "*I have to look at market evidence because I must do so in a red book valuation*". This is a reference to the Red Book UK approved by the Royal Institution of Chartered Surveyors (RICS) for use by members in undertaking various valuations. Mr. Sharp is presumably aware that the RICS has specifically said that relativity assessments are excluded from the guidance in red book valuations.

The Mundy case

13. This is an extremely important case as the Upper Tribunal did start off by trying to give some guidance and the case was appealed to the Court of Appeal ([2018] EWCA Civ 35 before Lady Justice Arden and Lords Lewison and Jackson) where all the grounds of appeal were dismissed.
14. The case report in the Upper Tribunal is complex being some 80 pages long. It deals with 3 properties with different considerations for each. The problem for that Tribunal was that all 3 properties were in London with values much greater than the subject property in this case. The decision also dealt with and dismissed the Parthenian model of what is known as hedonic regression. That issue took up quite a large part of the judgment.
15. On the issue of relativity, paragraph 135 records that in **Cadogan v Cadogan Square Ltd.** [2011] 3 EGLR 127, the Lands Tribunal carried out a comparison between the real world relativity, as shown by the Savills 2002 graph, and the relativity for leases without rights under the 1993 Act, as shown in the Gerald Eve Graph "*and pointed out that if the graphs could be relied upon then the difference between the relativities should disclose the appropriate deduction for the absence of rights under the Act for a lease of any particular length*".
16. The Upper Tribunal received evidence from the writers of most of the well known graphs and noted, with some disappointment, that the RICS had not been able to assist the Tribunal by collating all the evidence and producing a more acceptable graph.
17. The judgment then becomes less helpful. It says that the Upper Tribunal has considered whether it can set down guidelines to assist parties in the future. However, at paragraph 164 goes on to say:

"We would have liked to have arrived at a method of valuation which could 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.”

18. In Appendix C, the Tribunal considered the various graphs. It concludes:

*“In **Kosta v Carnwath (re: 47 Phillimore Gardens)** [2014] UKUT 0319 (LC) the Tribunal held that a prospective purchaser of an existing leasehold interest, acting prudently, would have taken an average of the relevant graphs contained in the RICS 2009 report when assessing relativity. We have had the benefit of hearing detailed evidence about the construction and use of those graphs. From such evidence we are satisfied that at the valuation dates a prospective purchaser would not have taken an average relativity from those graphs. It is most likely that they would have referred to the Gerald Eve graph first and foremost. The evidence was that the market had only started to adopt an average relativity from the graphs following the decision in Kosta”.*

19. Finally, there are references in the Lands Tribunal decision which are relevant when considering future good practice. In paragraph 168 the Tribunal says “...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 paragraph 169 it says “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 other words, the Tribunal in that case was saying clearly that relevant market evidence must be ‘at or near the valuation date’.

Deritend Investments (Birkdale) Ltd. v Koprnelia Treskonova
[2020] UKUT 0164 (LC)

20. This is another relevant case referred to by both experts. The property involved was in Sutton, Surrey, not unlike Horsham in location. The unexpired term was 55.95 years which is also similar to the present case.

21. It was agreed that there was no useful market evidence for the purpose of considering relativity. In fact one of the experts in that case was Mr. Sharp. The main issue was the use of graphs following the **Mundy** case. It was agreed that graphs had moved on particularly as some e.g. Savills had changed following **Mundy**.

22. Mr. Sharp in that case had argued that the Savills 2016 graph and the Gerald Eve graph (both for prime central London) should be used and the average was 75.4%. However, Mr. Sharp then said that this was still too high for Sutton and he reduced his relativity rate to 67% derived from the Beckett and Kay 2017 graph.

23. The Upper Tribunal did not accept Mr. Sharp's approach and determined that the correct relativity figure was 75.4% and that the Savills and Gerald Eve 2016 graphs should be used.
24. It is also worth mentioning that the Upper Tribunal reminded us, with approval, of the comments made in the earlier decision of **Arrowdell v Coniston Court (North) Hove Ltd** [2007] RVR 39 which said "*It is certainly understandable that valuers negotiating the settlement of an enfranchisement claim should have regard to LVT (now FTT) decisions on relativity, since these might seem to them to be the best guide of the likely outcome if they were unable to reach agreement....But the decisions themselves can constitute no useful evidence in subsequent proceedings*". In this case, both experts mentioned earlier FTT decisions.

Conclusions

25. It is clear to this Tribunal that the **Mundy** decision did not provide the sort of help which was intended and this is clearly stated by that Tribunal. What it did say was that if there was reasonable comparable evidence of value at or near the valuation date for properties with similar unexpired terms as the subject property plus values of properties with long unexpired terms, then these should be the starting point rather than relativity graphs.
26. In this case, Mr. Sharp agreed in his evidence that the date of valuation for the nearest earlier case he relied upon was 4th July 2019. The valuation date in this case was agreed at 5th December 2020. The Tribunal simply did not accept that this or the earlier cases were 'at or near' the valuation date and the graphs should therefore be used.
27. As to the FHVP, the Tribunal simply prefers Mr. Wilkins' evidence. The complex adjustments adopted by Mr. Sharp are simply not warranted and most, if not all, are not applicable in any event. The adjustments for the condition and position of the flat, for example it has 3 elevations and is close to stairs are countered by other things such as the very small size of the 2nd bedroom and the distance from the lift.
28. There is one possible problem with Mr. Wilkins' adoption of adjustments at page 121 (Appendix 5 in his report) because these seem to have been introduced at the wrong place in the calculations. However, correcting these would have such a small effect on the end result that the Tribunal does not consider that such adjustments need to be interfered with.



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Judge Bruce Edgington
24th November 2021

ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. 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.
- iv. 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.