



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

**Case Reference** : **LON/00AZ/OLR/2021/0241 V:CVP**

**Property** : **4 Elm Court, 93 Belmont Hill, London  
SE13 5DX**

**Applicant** : **Beverley Michelle Morris**

**Representative** : **Mr William Bradley**

**Respondent** : **Brickfield Properties Limited**

**Representative** : **Mr Robin Sharp**

**Type of  
Application** : **93 Act New Lease of Flat**

**Tribunal** : **Judge Sheftel  
Mr A Harris LLM FRICS FCI Arb**

**Date of Decision** : **17 November 2021**

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**DECISION**

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This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties have provided a Bundle of Documents for the hearing. The order made is described at the end of these reasons.

**Background**

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) for a determination of the premium to be paid and the terms for a new lease.
2. The hearing of this application took place on 3 November 2021. The Applicant, leaseholder, was represented by Mr William Bradley MRICS

BSc Hons CUEW. The Respondent, landlord, was represented by Mr Robin Sharp BSc FRICS.

3. The application relates to 4 Elm Court, 93 Belmont Hill, London, SE13 5DX (the “Property”). The Property comprises a two-bedroom ground floor flat in a three-storey block of flats constructed in the 1970s. The gross internal floor area of the Property is approximately 60.5sqm. The Property was sold to the Applicant in October 2020 for £250,000.
4. Shortly before the sale, the Applicant’s predecessor in title served a Section 42 Notice of Claim dated 6 October 2020, proposing a premium for a lease extension of £13,850 – the benefit of which was subsequently assigned to the Applicant. The Respondent served a Counter-Notice dated 17 December 2020, proposing a premium of £53,170.
5. As set out in a statement of agreed facts, the following matters have been agreed between the parties:
  - (1) Valuation date: 8 October 2020
  - (2) Term date of leases: 24 March 2096
  - (3) Unexpired Term: 75.46 years
  - (4) Ground rent: £25 per annum
  - (5) Deferment Rate: 5%
  - (6) Capitalisation Rate: 6.5%
6. The issues in dispute are:
  - (1) relativity; and
  - (2) value.
7. The Applicant relies on a report of Mr Bradley dated 11 October 2021. Mr Bradley suggests a freehold value of £297,950 and relativity of 87.71%. He therefore suggests a premium of £20,776.
8. The Respondent relies on the report of Mr Sharp dated 7 October 2021. Mr Sharp suggests a freehold value of £309,596 and relativity of 84.56%. He therefore calculates a premium of £26,398.

### **Valuation**

9. Both valuers relied heavily on 13 Elm Court as a comparable: a flat in the same block sold in December 2018 for £295,000. It was agreed that 13

Elm Court is a first-floor flat consisting of two bedrooms, a reception room, separate kitchen and bathroom/WC. The lease had 168 years unexpired and the floor area is 61.1sqm.

10. For the leaseholder, Mr Bradley considered the sale of 13 Elm Court was the best evidence and made no adjustment to the achieved price for the difference in dates between the selling date of 13 Elm Court and the subject valuation date of 8 October 2020. Mr Bradley used this as his extended lease value.
11. For the landlord, Mr Sharp also place the greatest weight on this evidence but adjusted for the difference in dates by use of the land registry house price index which stood at 120.2 in December 2018 and 124.2 in October 2020. He added a further 1% for the fact the subject flat is a ground floor flat which he considers will be more attractive to elderly or disabled purchasers.
12. Both valuers referred to a number of other properties in support of their primary valuations, although neither place any significant reliance on them:
  - (1) 3 Elm Court is a second-floor flat in the same block having one bedroom instead of two. The flat sold for £240,000 in June 2021 with a 165-year lease. Mr Bradley used this to support his primary valuation, but Mr Sharp did not rely on it. The tribunal finds it of little assistance.
  - (2) 11 Elm Court was reported to be under offer in October 2021 at a figure of £285,000. This is a ground floor two-bedroom flat in the same block with a 215-year lease. It potentially would have been of interest as a comparable, but Mr Sharp reported that he had found out the sale had fallen through after preparation of his report. No weight is placed on this.
  - (3) 28 and 30 The Squirrels. These are two flats referred to in passing by Mr Sharp in a better block opposite the subject property. Flat 28 sold £370,000 in May 2018 and Flat 30 for £364,205 in May 2021. The tribunal derives little assistance from the two properties other than to show that the market was relatively static between the two dates.

- (4) 4 Waterside Court is a comparable introduced by Mr Bradley and is a two-bedroom flat (one bedroom having an ensuite bathroom), with reception room, kitchen and bathroom. It is a ground floor flat sold in February 2024 £300,000 with 105 years unexpired on the lease. The tribunal derives little assistance from this.
- (5) 31 Burnett House is another two-bedroom flat introduced by Mr Bradley which sold for £305,000 in July 2020. It again supports the general tone of values for two-bedroom flats in the general locality. Again, the tribunal places little weight on it.
- (6) 45 Boone Street is a two-bedroom split level maisonette on ground and first floors which sold for £315,000 in March 2020. It has different characteristics and accordingly the tribunal places little weight on this.
13. Overall, the tribunal agrees that 13 Elm Court is the most compelling evidence presented to the tribunal and places the greatest weight on it. The tribunal notes the difference in dates between the sale date for 13 Elm Court and the subject valuation date and has considered whether the market was static between those two dates as suggested by Mr Bradley, or whether there was some movement in values. The tribunal does not agree that the house price index should be strictly applied between two particular dates and considers that it is much more use as an indicator of trends. Nevertheless, the house price index shows some minor variations between values on the subject dates and the tribunal considers that the extended lease value would have been £300,000 for the subject property on the valuation date taking into account the changes in the index between the two dates and allowing for the haggling of the market. The tribunal does not find sufficient evidence to support a 1% adjustment between ground and first floor flats as contended for by the Respondent.
14. To determine the notional freehold value, applying a 1% adjustment, we therefore arrive at a figure of £303,000.

### **Relativity**

15. Both experts refer to the Upper Tribunal's decision in *Sloane Stanley v Mundy* [2016] UKUT 223 (LC). In accordance with the Upper Tribunal's guidance, both valuers looked for market evidence to support their view of relativity.

16. For the tenant, Mr Bradley conducted a detailed search for comparable properties including auction sales. However, he came to the conclusion that the relativity rates vary so widely that no firm conclusions could be drawn from market evidence. Mr Bradley therefore turned to the relativity tables and considered that on the basis as set out in *Zucconi and Deritend (Inv) Birkdale Ltd v Trekonova* [2020], applied the figure of 87.71%, being the average of the Gerald Eve 2016 and Savills unenfranchiseable graphs.
17. Mr Sharp took a different approach and attempted to analyse the sale of the subject property in October 2020. Mr Bradley had taken the view that the sale of the subject property for £250,000 could not be relied on as market evidence because it was not marketed and was a sale between connected persons and therefore does not fall within the definition of a market transaction. He also noted the fact that it was tenanted at the time of the sale.
18. Returning to Mr Sharp's evidence, based on his inspection, Mr Sharp adjusted the sale price of £250,000 by £7,500 for cleaning and minor refurbishment following the ending of the tenancy. He then applied 1993 Act rights to the adjusted sale price of £257,500, making a further adjustment of £5,500. In this regard, he noted that the Savills 2016 table indicates a fall of 2.13% for this factor. He therefore arrived at a figure of £252,015 for the existing lease value net of rights, which gave a relativity of 81.4%. This is below the relativity indicated by the graphs in accordance with the *Deritend* guidance of 87.71% as noted above. With regard to the existence of the assured shorthold tenancy at the time of the sale, Mr Sharp noted that such a tenancy can be brought to an end. However, in order to reflect uncertainty caused by a tenancy and because the relativity indicated by the sale price is below that shown in the most reliable graphs he adjusted to a midpoint between 87.71% from the graphs (the same figure used by Mr Bradley) and his figure of 81.4% to arrive at a figure of 84.56%.
19. The tribunal has considered the evidence presented by both valuers on relativity. It agrees with Mr Bradley that the evidence from the market is too uncertain to derive any firm indication of relativity. The tribunal is also not persuaded by Mr Sharp's approach to the sale of the subject property which was not an arm's length basis between the vendor and the current

owner and in which the flat was not marketed. Further, Mr Sharp's approach relies on subjective adjustments which are not supported by evidence.

20. In consequence the tribunal is left to rely on relativity rates derived from the graphs of 87.71%.

### **Conclusions**

21. For the reasons set out above, we make the following determinations on the issues in dispute:

- (1) Notional Freehold Value - £303,000

- (2) Relativity – 87.71%

22. We determine the premium payable to be £21,125. Our working calculation is set out in the Appendix.

**Name:** Judge Sheftel

**Date:** 17 November 2021

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Appendix

<b>Term Value</b>					
<b>Term 1</b>					
Ground rent				£ 25.00	
YP	75.46	Years @	6.50%	15.2518	
PV of £1	0	Years @	6.50%	<u>1.00</u>	
					£ 381
Term Value					£ 381
<b>Reversion value</b>					
Reversion to freehold value				£303,000	
Pv of £1	75.46	Years @	5.00%	<u>0.02518</u>	
Reversion value					<u>£ 7,630</u>
					<u>£ 8,012</u>
Less					-
Freehold after extension capital value				£303,000	-
PV of £1	165.46	Years @	5%	<u>0.00031</u>	-
					<u>£ 95</u>
					<u>£ 7,917</u>
<b>Marriage Value</b>					-
Proposed interests					-
freeholder			£ 95		-
leaseholder			<u>£ 300,000</u>		-
			£ 300,095		-
less					-
value of existing interests					-
freeholder			£ 7,917		-
leaseholder			<u>£ 265,761</u>		-
			£ 273,678		-
					-
total marriage value				£ 26,416	-
50% share	50%				£ 13,208
<b>Total Premium payable</b>					<b>£ 21,125</b>