



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

**Case Reference(s)** : **BIR/00CT/OLR/2022/0004  
BIR/00CT/OC9/2022/0001  
BIR/00CT/OLR/2022/0007  
BIR/00CT/OC9/2022/0002**

**Properties** : **(1) 29 Mitford Drive Solihull B92 9PE and  
Parking Space 841  
  
(2) 27 Mitford Drive Solihull B92 9PE and  
Parking Space 815**

**Applicants** : **(1) Cyril Christopher Henry & Lorraine Phylis  
Anne Henry  
  
(2) Adrian Michael Keeney**

**Representative** : **Midland Valuations Limited  
(1) JM/MV/RP/29MITFORD  
(2) JM/MV/RP/27MITFORD**

**Respondent** : **LAMDA GR Limited**

**Representative** : **Nick Plotnek Associates**

**Type of Applications** : **An application under section 48 of the  
Leasehold Reform Housing & Urban  
Development Act 1993 (“the Act”) for a  
determination of the premium to be paid for  
the lease and the other terms of the acquisition  
which remain in dispute.**

**An application under section 60 (1) of the Act  
for a determination of reasonable costs.**

**Tribunal Members** : **V Ward BSc (Hons) FRICS – Regional Surveyor**  
**Judge M K Gandham**  
**N Wint BSc (Hons) FRICS ACI Arb**

**Date of Decision** : **6 July 2022**

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**DECISION**

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## DECISION

1. The Tribunal determines the premiums payable by the Applicants as follows:

**29 Mitford Drive Solihull B92 9PE and Parking Space 841**

**£45,670.00 (Forty Five Thousand Six Hundred and Seventy Pounds).**

**27 Mitford Drive Solihull B92 9PE and Parking Space 815**

**£45,670.00 (Forty Five Thousand Six Hundred and Seventy Pounds).**

2. The applications to determine the landlord's recoverable costs associated with these cases are stayed. The parties are to advise the Tribunal, within 21 days of the date of this decision, if costs are agreed or if they require the Tribunal to issue Directions in that regard.

## REASONS FOR THE DECISION

3. The Tribunal received applications under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for the determination of the premiums to be paid for the new leases and other terms of acquisitions which remain in dispute, and also applications under section 60 (1) of the Act for a determination of reasonable costs, in respect of 29 Mitford Drive Solihull B92 9PE (and Parking Space 841) and also 27 Mitford Drive Solihull B92 9PE (and Parking Space 815).
4. The case management powers provided by Rule 6 (3) (b) of the Tribunal Procedure (First – tier Tribunal) (Property Chamber) Rules 2013 allow the Tribunal to consolidate cases where there are common features. The Tribunal advised the parties that it intended to consolidate and deal with all of these applications together unless any of the parties objected to the consolidation. None of the parties objected.
5. In respect of 29 Mitford Drive, the First Applicants served a Notice of Claim (to extend the current lease by 90 years at a peppercorn ground rent and otherwise in accordance with the existing lease) under section 42 of the Act dated 18 June 2021. The Notice proposed a total premium of £32,400.00. By way of reply, the Respondent served a Counter-Notice under section 45 of the Act dated 17 August 2021, admitting the First Applicants right to acquire a new lease on the relevant date and proposing a premium of £46,000.
6. In respect of 27 Mitford Drive, the Second Applicant served a Notice of Claim (to extend the current lease by 90 years at a peppercorn ground rent and otherwise in accordance with the existing lease) under section 42 of the Act dated 18 June 2021. The Notice proposed a total premium of £31,400. By way of reply, the Respondent served a Counter-Notice under section 45 of the Act dated 17 August 2021, admitting

the Second Applicant's right to acquire a new lease on the relevant date and proposing a premium of £46,000.

7. Directions were issued by the Tribunal dated 4 February 2022.
8. The Tribunal understands that that the draft leases, setting out the proposed terms, have been agreed.
9. The Applicants in each case were represented by Mr Jolyon Moore MA of Midland Valuations whilst the Respondent was represented by Mr Nicholas Plotnek LLB of Nick Plotnek Associates.
10. In accordance with the Tribunal's Directions, the Applicants and Respondent had prepared and submitted their valuations. For each property, Mr Moore submits a valuation of £34,480 and Mr Plotnek a valuation of £46,840.

### **The Law**

11. Section 48 of the Act prescribes that if a premium, or the terms of a new lease, are not agreed it can be referred to the First-tier Tribunal (Property Chamber) where the premium can be assessed in accordance with the formula in Schedule 13 to the Act.
12. The relevant law in relation to the application under the Act is set out in Chapter II sections 39 to 62 and Schedule 13.
13. Chapter II of the Act relates to the individual right of a tenant of a flat to acquire a new lease of that flat. The law is contained in Sections 39 to 61B of the Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
14. Section 42 sets out what must be contained in the tenant's notice. Section 45 sets out what must be contained in any counter-notice given in response by the landlord.
15. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.
16. Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.

### **The Leases**

17. In respect of 29 Mitford Drive, the lease was made between Bryant Homes Limited (1) and Stephen Pitchford (2) and is dated 14 December 1967 for a term of 99 years from 25 March 1966. The rent is £30.00pa fixed for the term. Parking space no.841 is held on a co—terminus lease at a rent of £3.00pa fixed for the term.

18. In respect of 27 Mitford Drive, the lease was made between Bryant Homes Limited (1) and Keith Cyril Davies (2) and is dated 16 May 1967 for a term of 99 years from 25 March 1966. The rent is £30.00pa fixed for the term. Parking space no.815 is held on a co-terminus lease at a rent of £3.00pa fixed for the term.
19. The unexpired term for both properties, as at the valuation date, was agreed at 43.76 years.

### **The Properties**

20. The Tribunal carried out an inspection of the subject properties, and an external inspection of the comparable properties, on 20 April 2022.

#### *Common Features*

21. The properties are located at the end of a terrace of ground and first floor maisonettes in a block of 10 similar properties, standing behind an area of public open space. The estate within which the properties are situated was, according to the evidence provided, originally constructed in the 1960s. Solihull town centre and its amenities are located approximately 1.5 miles to the south.
22. Both properties benefit from central heating and double glazing.

#### *29 Mitford Drive*

23. This property is a ground floor maisonette with the following accommodation:

Hall, lounge with kitchen off, two bedrooms, bathroom and storage cupboard.  
Enclosed rear garden.  
Unmarked parking space in rear car parking area.

#### *27 Mitford Drive*

24. This property is a first floor maisonette with the following accommodation:

Hall, lounge with kitchen off, two bedrooms, bathroom and storage cupboard.  
No external garden areas.  
Unmarked parking space in rear car parking area.

### **Matters agreed between the parties**

25. The following matters were, initially, agreed between the parties:

(i) Valuation Date: 18 June 2021

(ii)	Lease expiry:	24 March 2065
(iii)	Unexpired term:	43.76 years
(iv)	Ground Rent (total):	£33.00 pa fixed
(v)	Capitalisation rate:	6.5%
(vi)	Extended lease value:	£157,500
(vii)	Deferment Rate	5.5%
(viii)	Uplift to FHVP	1%
(ix)	Marriage value division	50:50

### **Matter in dispute between the parties**

26. The following matter was in dispute:

	<u>Applicants</u>	<u>Respondent</u>
(i)	Existing Lease Value: £104,162	£79,571

### **The Submissions of the Parties**

27. Following the inspection, an oral hearing was held at the Tribunal Hearing Rooms, Centre City Tower, Birmingham following the inspection. Present were the following:

For the Applicants

Mr Jolyon Moore MA of Midland Valuations

For the Respondent

Mr Nicholas Plotnek LLB of Nick Plotnek Associates.

28. The submissions of the parties, both in writing and during the hearing, in respect of the disputed issue, the existing lease value of the properties, were as follows.

#### *The Applicants*

29. On behalf of the Applicants, Mr Moore stated that at the date of valuation there was simply insufficient evidence of open market transactions of similar maisonettes in the immediate vicinity with short leases. As such, he considered the relativity approach

was the most appropriate method of adducing the present lease value. In support of this assertion, he researched the sales of maisonettes on the estate for the period January 2021 to January 2022. With the date of the tenants' notices being June 2021, he considered a six-month period either side of the valuation date was appropriate to discern any trends or evidence that might be available. However, he actually provided sales advice back to March 2020 of all flats within a quarter mile radius.

30. The sales data provided was specific to the Damsonswood Estate, as Mr Moore considered that transactions to the south of the Grand Union canal related to properties of a different age and type and properties on Foredrove Lane were also ignored.
31. Details of sales of maisonettes were provided as follows:

Address	Date of Sale	Price	Lease Term
384 Rowood Drive	14.01.2022	£165,000	141 yrs x 06.07.2012
69 Draycote Close	17.12.2021	£145,000	142 yrs x 25.05.2011
162 Rowood Drive	09.07.2021	£140,000	189 yrs x 25.03.1966
16 Greenland Rise	27.05.2021	£149,500	151 yrs x 14.07.2006
27 Merryfield Close	02.07.2021	£155,650	146 yrs x 01.04.2009
287 Rowood Drive	17.05.2021	£150,000	148 yrs x 10.02.2006
271 Rowood Drive	12.03.2021	£166,000	150 yrs x 14.07.2006
336 Rowood Drive	18.03.2020	£165,750	100 yrs x 22.08.2016

32. In the opinion of Mr Moore, this table confirms that there is not only insufficient evidence to consider open market transactions but that there are in fact no transactions. This is perhaps not surprising when considering the short length of the unexpired term on the subject leases. Therefore, Mr Moore submits that there is no choice but to revert to the use of relativity graphs. Following the decision of the Upper Tribunal in *Deritend Investments (Birkdale) Limited v Treskonova* [2020] UKUT 0164 (LC) ("*Deritend*"), Mr Moore considers it is appropriate to use the average of the Savills Unenfranchiseable and Gerald Eve 2016 graphs. He referred to paragraph 58 of *Deritend* where the Deputy Chamber President states:

*"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."*

33. Continuing, Mr Moore states that he has employed the two graphs endorsed by that decision as there is no market evidence, which he considers he has proven.
34. Having established that the relativity approach is the one to use, Mr Moore has calculated that the average of the two graphs referred to above is 65.48% and notes that this was also the relativity figure given in *The Trustees of the Barry and Peggy*

*High Foundation -v- Claudio Zucconi and Mirella Zanre* [2019] UKUT 0242 (LC) (“Zucconi”).

35. Mr Moore submits that the evidence he has provided is a clear endorsement of the use of relativity graphs to adduce the present lease value in these two matters.

*The Respondent*

36. On behalf of the Respondent, Mr Plotnek provided details of four comparables which he considers appropriate. These, together with the adjustments made, are as follows:

For each comparable, the Indexation of Sale adjustment is made by using the UK House Price Index for Flats and Maisonettes in Solihull (March 2022 edition).

105 Walsgrave Drive

Date of Sale 11 October 2019

At the date of sale, the lease had 43.96 years unexpired, and 43.28 years as at the valuation date. With adjustments, Mr Plotnek calculates a value of £86,925, before making an allowance for the No Act world.

This property has the benefit of a garage for which a deduction of £2,000 was made.

Tenants Improvements: No allowance was made for Tenant’s Improvements as the flat was not in improved condition at the date of sale.

Adjustment for reduced lease length at valuation date: Mr Plotnek adjusted for the reduced lease length as at the valuation date by taking the Savills Unenfranchiseable relativity at 43.96 years (65.77%) and the Savills Unenfranchiseable relativity at 43.28 years (65.12%) and adjusting the sale price downwards by the percentage difference between the two values:-

$$100 - ((65.12 + 65.77) \times 100) = 0.988\%$$

Existing lease value (adjusted): In making the above adjustments, Mr Plotnek arrived at an existing lease value of £86,925 (nominal rounding).

Existing lease value (sale price)	£86,500
less for garage (£2,000)	£84,500
less to adjust for lease length to date of Notice (-0.988%)	£83,665
Index to date of Notice (124.7 + 120.0) add 3.91%	£86,925

29 Mitford Drive

Date of Sale 16 April 2019



At the date of sale, the lease had 45.94 years unexpired, and 43.76 years as at the valuation date. With adjustments, Mr Plotnek arrives at an existing lease value of £86,050, before making any allowance for the No Act world.

Tenant's Improvements: No allowance was made for Tenant's Improvements as the flat was not in improved condition at the date of sale.

Adjustment for reduced lease length at valuation date: Mr Plotnek adjusted for the reduced lease length as at the valuation date by taking the Savills Unenfranchiseable relativity at 45.94 years (67.45%) and the Savills Unenfranchiseable relativity at 43.76 years (65.61%) and adjusting the sale price downwards by the percentage difference between the two values:-

$$100 - ((65.61 + 67.45) \times 100) = 2.73\%$$

Existing lease value (adjusted): In making the above adjustments, Mr Plotnek arrived at an existing lease value of £86,050 (nominal rounding).

Existing lease value (sale price)	£85,000
less to adjust for lease length to date of Notice (-2.73%)	£82,680
Index to date of Notice (124.7 + 119.8) add 4.09%	£86,050

#### 90 Rowood Drive

Date of Sale 27 September 2018

At the date of sale, the lease had 46.52 years unexpired, and 43.76 years as at the valuation date. With adjustments, Mr Plotnek calculates an existing lease value of £90,675, before making any allowance for the No Act world.

Tenant's Improvements: No allowance was made for Tenant's Improvements as the flat was not in improved condition at the date of sale.

Adjustment for reduced lease length at valuation date: Mr Plotnek adjusted for the reduced lease length as at the valuation date by taking the Savills Unenfranchiseable relativity at 46.52 years (68.02%) and the Savills Unenfranchiseable relativity at 43.76 years (65.61%) and adjusting the sale price downwards by the percentage difference between the two values:-

$$100 - ((65.61 + 68.02) \times 100) = 3.54\%$$

Existing lease value (adjusted): In making the above adjustments, Mr Plotnek arrived at an existing lease value of £90,675 (nominal rounding).

Existing lease value (sale price)	£90,000
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less to adjust for lease length to date of Notice (-3.54%)	£86,814
Index to date-of Notice (124.7 + 119.4) add 4.44%	£90,675

27 Mitford Drive

Date of Sale 27 June 2018

At the date of sale, the lease had 45.25 years unexpired, and 43.76 years as at the valuation date. With adjustments, Mr Plotnek calculates an existing lease value of £94,375, before making any allowance for the No Act world.

Tenant’s Improvements: The flat was not in improved condition at the date of sale, but Mr Plotnek made a deduction to the sale price of £2,000 for the tenant’s improvement – the installation of wet central heating.

Adjustment for reduced lease length at valuation date: Mr Plotnek adjusted for the reduced lease length as at the valuation date by taking the Savills Unenfranchiseable relativity at 45.25 years (66.90%) and the Savills Unenfranchiseable relativity at 43.76 years (65.61%) and adjusting the sale price downwards by the percentage difference between the two values:-

$$100 - ((65.61 + 66.90) \times 100) = 1.93\%$$

Existing lease value (adjusted): In making the above adjustments, Mr Plotnek arrived at an existing lease value of £94,375 (nominal rounding).

Existing lease value	£95,000
less for wet central heating (£2,000)	£93,000
less to adjust for lease length to date of Notice (-1.93%)	£91,205
index to date of Notice (124.7 + 120.5) add 3.49%	£94,375

37. Mr Plotnek then offered a discussion on real world evidence in relation to this matter. He submits that tribunals have long accepted that Act rights add value to leaseholds in the real world, which results in difficulties when trying to establish relativity and/or the value of a short leasehold under the 1993 Act assumption. Mr Plotnek comments that there has been some general guidance from the Upper Tribunal in *Nailrile v Cadogan* (LRA/114/2006) (LT) (“*Nailrile*”) where at 229(s) they said:—

*“Relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity.”*

Mr Plotnek considers that there are two matters to consider. The first, he states, is that real world evidence of short lease sales is preferable to using graph or graphs. He refers to the many Upper Tribunal cases on this point, as well as the decision of the FTT in *Bazso v J H Watson Property Investment Ltd* BIR/00CR/2020/0024, where

the FTT relied on one comparable which was considered of sufficient relevance to offset the use of relatively graphs. Whilst Mr Plotnek has placed reliance on the real world evidence in this matter, he states that, were graphs to be relied upon instead, the standard today is Gerald Eve 2016 and Savills Unenfranchiseable. For an unexpired lease length of 43.76 years, Gerald Eve 2016 shows a relativity of 65.34% and Savills Unenfranchiseable 65.61%, which Mr Plotnek averages to 65.47%. This averaging of the two graphs was accepted in the Upper Tribunal decision in *Zucconi*. The second matter, he states, is that an allowance needs to be made for the No Act world, as endorsed by many Upper Tribunal decisions.

38. As a check, in favour of his real world evidence approach, Mr Plotnek applied a relativity derived from the *Zucconi* decision to compare against the relativity derived from the real world evidence. Calculating the relativity from *Zucconi* at 43.76 years unexpired by interpolating between the two data points of 43.75 years (65.46%) and 44 years unexpired (65.67%): 65.47%, the relativity derived from the real world evidence was 50.02%, as compared to the relativity of 65.47% derived from the *Zucconi* graph. This differential was in line with what Mr Plotnek states he has found in practice, that is, where there is real world evidence, the relativity is in the vast majority of cases lower than the graphs would suggest.
39. Summing up, Mr Plotnek considers the fairest approach is to average the adjusted sales values of the four properties, which by his calculations gives an average value of £89,506, which he submits should be adopted as the existing lease value for 27 and 29 Mitford Drive.
40. In respect of the No Act world deduction, Mr Plotnek reasons that, given that the use of the Savills Unenfranchiseable graph is an accepted tool for valuers when considering relativity, he considers it appropriate that we use the discount derived from their graph in assessing the discount to be applied in this case and hence arrives at a No Act world deduction of 11.10% by analysing Savills Enfranchiseable and Unenfranchiseable relativities at 43.76 years: 73.80% and 65.61%.

$$100 - ((65.61 + 73.80) \times 100) = 11.10\%$$

41. Continuing, to arrive at an existing lease value in the No Act world, Mr Plotnek has taken the existing lease value of £89,506 and made a No Act world deduction of 11.10%. £89,506 X 88.90% (100 – 11.10%) = £79,571. This breaks back to a real world relativity of 50.02%. This is the figure he has adopted in his valuation which results in a calculation of the premium at £46,840.

*The Applicants' comments on the Respondent's valuation*

42. Within his written submissions and also during the hearing, Mr Moore criticises, on several grounds, the approach taken by Mr Plotnek to calculate the existing lease value of the subject properties by taking the price that was paid for 29 Mitford Drive

in April 2019 and simply applying a No Act world discount of 11.10 % to arrive at his value.

43. Firstly, he submits that 29 Mitford Drive was not advertised for sale on the open market. In support of this claim he referred the Tribunal to a copy of a letter provided in evidence from Peter John Smith, the executor of Brian Smith who was the predecessor in title to the current leaseholders. The Tribunal considers this letter is significant and hence it is reproduced below. It is addressed to Mr Moore and is dated 3 March 2022.

*“Following my wife’s recent telephone conversation with Lorraine Henry, one of the leaseholders of the above property, I am writing as requested to provide you with details of the circumstances surrounding the sale of the property to her and her husband in 2019.*

*The flat was owned by my late brother, Brian Smith, who died on 10th September 2018. It was in an unmodernised condition with an unextended lease and was valued for probate purposes at approximately £90,000 following valuations by three firms of estate agents.*

*A few months after my brother’s death, Lorraine Henry came to the property to visit her brother who had purchased the flat above. One of my nephews was working inside No.29 and Mrs Henry asked what plans the family had for the property because she was looking for an investment. My nephew told her what valuations the estate agents had given and she made an offer of £85,000. The family discussed the offer and we decided to accept it. Although it was lower than the estimates we had been given, we felt there were many advantages. We knew that the short lease and the unmodernised condition might have been an issue for some purchasers, and we wanted to complete the sale as soon as we could.*

*The property was never advertised for sale on the open market.*

*I hope this is of use. Please let me know if you need anything further.*

*I am aware that this document may be used in proceedings at the First-tier Tribunal Property Chamber in Birmingham and it should be accompanied by a Statement of Truth. I therefore confirm that the contents of this letter are true to the best of my knowledge and belief and the facts contained within it are correct.”*

44. In Mr Moore’s opinion, the letter is self-explanatory and describes the circumstances in which the property was sold. With regard to defining a property being offered on the open market, Mr Moore offers the guidelines for carrying out valuations in respect of disposals under the Charities Act 2011. Having discussed this with other surveyors who carry out such valuations, they state that their advice to clients with charitable status is that the property in question should be advertised for at least four weeks and, if possible, on a national portal. Mr Moore argues that such advice should extend to

any client and not just charities if there is to be confidence that the market in general has had a reasonable opportunity to consider the property being sold.

45. Mr Moore submits it is clear that the transaction involving the sale of 29 Mitford Drive was one of convenience between two uninformed parties and that this transaction could not be relied upon as being truly reflective of the open market. He considers that the landlord is being selective in its choice of a starting point without any justifiable reason for doing so. Both flats were unmodernised at the time they were purchased by the current leaseholders and he states that it has already been agreed between the parties that - *ceteris paribus* - there is no difference in the value of ground-floor maisonettes on the estate when compared with those on the first-floor. As such, he contends that there is no reason to adopt a different capital value, other than to reflect the movement of the property market during the intervening period. He states that it should be evident to any valuer that the sale of 29 Mitford Drive at £85,000 in April 2019 should be looked at very closely when an identical property situated directly above and in the same unmodernised condition had sold for £95,000 nine months' earlier, especially since, according to the Nationwide House Price Index, property values within the West Midlands did not fall but actually rose by 2.62% during this period.
46. In addition, Mr Moore submits that it is wholly inappropriate to take the sale of 29 Mitford Drive in April 2019 and totally ignore what happened to the property market between that date and June 2021 when the leaseholders of both flats exercised their rights of enfranchisement. He contends that a single transaction 26 months earlier is a highly unreliable basis upon which to derive the present lease value, even more so when one considers that it was not an open market transaction. Neither does he accept the proposition that the value of 29 Mitford Drive did not appreciate at all during the period when the West Midlands property market - according to the Nationwide House Price Index increased by 12.86% and in some areas within the region by more than that. He accepted that growth might be lower in the case of the two subject properties, to reflect the lease length, but suggested it was a "*sweeping statement*" to say that there would be no growth at all contended that this assertion was not supported by any evidence whatsoever.
47. Of the four comparables analysed by Mr Plotnek, Mr Moore considers that these are too historic, the oldest being three years before the valuation date, and further that they are too few in number.
48. Finally, Mr Moore argues that Mr Plotnek ignores the refurbishment work that was carried out to both properties between the dates that they were purchased and June 2021, the valuation date for the purposes of the enfranchisement figure. In so doing, according to Mr Moore, he has not considered the value of the property with the existing lease at it stands today. Mr Moore submits that it is wholly wrong to value the extended lease with the refurbishment work and the present lease without. He states that if Mr Plotnek wanted to adopt this approach, then it would also be necessary for him to consider the value of the flats today with long leases but

deducting the additional value that has been created by virtue of the modernisation work. He submits that Mr Plotnek's approach has the effect of artificially increasing the differential between the two values. To Mr Moore, this is fundamentally incorrect.

*Additional comments by Mr Plotnek at the hearing*

49. At the hearing, Mr Plotnek stated that the sale of 29 Mitford Drive was an 'arm's length transaction', as the seller and vendor were not connected. He accepted that if the property had been exposed to the open market, a better price might have been achieved, however, stated that this would have been offset by the seller having to pay estate agents' fees and possibly holding costs.
50. Whilst Mr Plotnek was of the opinion that, ideally, one would have more than four comparables, he considered the ones he had provided were relevant, and that he had analysed the same and adjusted the figure to reflect the valuation date and lease length as expected. .
51. Further he did not accept that the market itself had been experiencing exceptional growth over his analysis period. He submitted that growth in the period 2020 to 2022 had been more significant after the valuation date than before it.
52. In response to the accusation of double counting i.e. extended lease value with property modernised whilst existing lease value reflecting unmodernised condition, he stated that the extended lease value was agreed and that his understanding at the time of the agreement was that this was on the basis of lessee's improvements being excluded from the figures agreed.

***Further submissions***

53. Following a review of the evidence after the hearing, the Tribunal considered that further submissions were required in respect of the "agreed" extended lease value of £157,500. From the submissions made, both in writing and also at the hearing, it appeared that the basis upon which this figure was agreed in terms of the level of improvements, was inconsistent. At the hearing, the Applicants indicated that the value of £157,500 reflected approximately £14 – 17,000 of improvement costs, whilst the Respondent was of the opinion that the agreed value was excluding the value of the improvements. As this issue was fundamental to the Tribunal's determination of the premium, the Tribunal issued further directions for the parties:

- (i) to confirm their opinion as to the basis upon which the sum of £157,500 was agreed; and
- (ii) with regard to any improvements included in the above, to quantify the same.

54. In his further submissions, for the Applicants, Mr Moore said that whilst in his submissions prior to the hearing, he had stated that the extended lease value of £157,500 was agreed between the parties, he had failed to make an appropriate

discount for tenant's improvements, despite referring to them both at the hearing and in his written submissions, for which he apologised. In his further submissions, he then proceeded to quantify the improvements as follows:

27 Mitford Drive

New upvc double—glazed windows and door	£1,500
New kitchen	£3,500
New bathroom	£5,000
New gas supply	£2,000
Total rewire and installation of alarm	<u>£2,000</u>
	£14,000

29 Mitford Drive

New upvc double—glazed windows and doors	£4,000
New kitchen	£5,000
New bathroom	£4,000
Total rewire and installation of alarm	£2,000
Upgrade to parts of the heating system	<u>£1,000</u>
	£16,000

Mr Moore then reworked valuations for each of the Properties, deducting the improvements shown above from the extended lease value of £157,500 which resulted in premium calculations of £31,437 for 27 Mitford Drive and £31,001 for 29 Mitford Drive.

55. For the Respondent, Mr Plotnek reiterated that he was of the opinion that the agreed value of £157,500 reflected tenant's improvements. To support this contention, he then proceeded to support the same with a schedule of sales of comparable properties with extended leases all of which had been refurbished.

These were as follows:

<u>Address</u>	<u>Date of Sale</u>	<u>Sale Price</u>	<u>Lease length at sale</u>
384 Rowood Drive, B92 9LG	14-Jan-22	£165,000	131.47 years
169 Rowood Drive, B92 9LL	10-Sep-21	£165,000	133.53 years
107 Walsgrave Drive, B92 9PR	09-Jul-21	£163,000	131.8 years
271 Rowood Drive, B92 9LQ	12-Mar-21	£166,000	134.47 years

Considering the above, he adopted £165,000 as the extended lease value of the property in an improved condition.

56. Mr Plotnek then proceeded to consider the improvements. He referred to Schedule 13 of the Act, which states at Paragraph 3(2)(c) that the value of the landlord's interest is made:

*“– on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded”*

He emphasised to the Tribunal that it is the ‘value’ of the improvement that is to be disregarded, and not its ‘cost’. He stated that, assuming that the property was maintained in compliance with the repairing provisions in the lease, the base position for assessing the value of improvements was much higher than would be the case if the property was in a seriously dilapidated condition. Mr Plotnek stated that, in his experience, the value of improvements is generally much lower than their cost, and for this type of property (2-bed maisonettes constructed in the 1960s with warm air heating) the usual allowance made by valuers for such items was in the range of £4,000 to £5,000, with the top end of this range encompassing the following improvements: gas central heating, uPVC double glazing, refitted bathroom and refitted kitchen.

57. Continuing, Mr Plotnek considered it evident that, as the comparable sales referred to above exceeded the agreed extended lease value of £157,500 by some £7,500, it was clear that the agreed value of £157,500 excluded the value of tenant’s improvements.

## **The Tribunal’s Determination**

### *Graphs versus Evidence*

58. The first issue facing the Tribunal in this matter is whether to rely on actual evidence, including sales of the subject properties, which is more historic than would be preferred, or to use the theoretical approach offered by the use of relativity graphs. The use of the latter has been simplified since the Upper Tribunal decision in *Deritend* which endorsed the use of the Savills and Gerald Eve 2016 graphs with the important caveat, *where there is no transaction evidence*.
59. In addition to the agreed valuation components, the parties have agreed that there should be no difference between a ground and first floor property on the basis that the likely purchaser of this type of property in this location would likely be an investor who, with rental return in mind, would not differentiate between the two. The Tribunal accepts this argument.
60. The Tribunal must decide, therefore, at what point actual transaction evidence should be discarded in favour of relativity graphs, as it does not consider it possible here to reconcile the approaches taken by the respective valuers
61. Considering the criticisms made by Mr Moore of the approach taken by Mr Plotnek, the Tribunal would comment as follows. The Tribunal agrees that, in an ideal world, more than three or four comparables would be available, however, in the opinion of



this Tribunal, this number may be sufficient (in certain circumstances) to establish a tone of values.

62. As per the guidance in *Brickfield Properties Limited v Ullah, Singh and Alam* [2022] UKUT 025 (LC) (put to the parties at the hearing):

*“In carrying out a valuation, it is necessary to have regard all available evidence, and then to stand back and consider how it all fits together. More weight might be given to the elements of evidence which seem to fit a pattern, especially when, as here, some pieces of the jigsaw are blurry.”*

63. Noting that the comparables offered include the subject properties (which cannot be ignored) and two very similar properties in the locality, and that the values appear to ‘fit a pattern’ (falling relatively close to £90,000), the Tribunal considers that the sales evidence provided by Mr Plotnek outweighs the disadvantages of not using the same in favour of the relativity graphs.
64. These comparables were adjusted by use of the Land Registry UK House Price Index for Flats and Maisonettes within the Borough of Solihull for the period from June 2018 to June 2021 (“the relevant period”). This shows that growth over the relevant period was 3.09% (although not linear), which the Tribunal considers is capable of adjustment hence does not agree with Mr Moore that the rate of growth renders this evidence unviable.
65. Accordingly, the Tribunal, on balance, favours the actual sales evidence provided by Mr Plotnek.

#### *Existing Lease Value*

66. Having taken this step, the Tribunal must consider the sale of 29 Mitford Drive, which was clearly at below what would be considered market levels. The purchaser of the property was the sister of the purchaser of 27 Mitford Drive and, knowing the price paid for the latter and the circumstances of the vendors of 29 Mitford Drive, appeared to have made a relatively low, but successful offer. It therefore requires adjustment. The probate value of the property was £90,000, however, the Tribunal prefers to adopt £95,000 which was achieved for the sale of the adjoining property approximately 10 months before, noting that probate values can generally be lower than values achieved on the open market.
67. The Tribunal, whilst adopting the unexpired lease term values and minor improvement adjustments given by Mr Plotnek, has reworked his analysis of the four comparables taken from the House Price Index incorporating the adjustment for 29 Mitford Drive above, as shown in Appendix Two. The Tribunal does not consider that these adjustments are excessive or unreasonable and they result in an existing lease value of £92,000.

*Extended lease value.*

68. As was indicated by the further submissions, it was clear that whilst the extended lease value was nominally agreed at £157,500, the basis of the same with regard to improvements was not. Mr Moore had kindly provided details of the cost of improvements but provided no supporting evidence that the sum of £157,500 represented an extended long lease value on an improved basis ie as a starting point from which a deduction for improvements could be made. Mr Plotnek had provided evidence to this end. Following an external inspection of the properties cited by Mr Plotnek above, and consideration of the written submissions relating to the same, the Tribunal considers that these represent excellent comparable evidence; they are similar properties and are in close proximity to the subject properties. The Tribunal therefore accepts Mr Plotnek's extended lease value, in an improved condition, of £165,000.

*The value of improvements to be deducted.*

69. In the experience of the Tribunal, generally the cost of improvements is not reflected in the market price achieved, particularly as in a reasonable market at the valuation date and, having agreed with Mr Plotnek that the extended lease value, in an improved condition, is represented £165,000, considers that a reasonable sum to be deducted for the improvements carried out would be fairly represented by £7,500. In addition, for the avoidance of doubt, the Tribunal makes no differentiation as to the amount to be deducted for improvements between the subject properties despite there being a slight difference in the actual cost of improvements to each property, as the Tribunal considers the market itself would not make any adjustment. The Tribunal therefore considers the extended long lease value of the subject properties as £157,500.

*No Act World Adjustment.*

70. For the No Act world adjustment, the Tribunal agrees with Mr Plotnek's approach of extrapolating and analysing Savills Enfranchiseable and Unenfranchiseable relativities at 43.76 years: 73.80% and 65.61%;  $100 - ((65.61 + 73.80) \times 100) = 11.10\%$ .

*Other Agreed Matters*

71. The Tribunal is prepared to accept the other matters agreed in paragraph 25 above.

**Valuation**

72. Taking the matters determined above with the matters agreed, the Tribunal's valuation is shown at Appendix One. The Tribunal therefore determines the premium payable to be the sum of £45,670.00 plus costs in accordance with section 60 of the Act, for each property.

## **Appeal**

73. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

V Ward

## Appendix One

### The Tribunal's Valuation

#### Parties Agreed Inputs

Term Commencement:	25/03/1966
Lease term (years):	99
Existing Lease Expiry:	24/03/2065
Date of Valuation:	18/06/2021
Term unexpired:	43.77 years (say 43.76 as agreed)
Ground Rent:	£33.00 per annum fixed
Capitalisation Rate:	6.50%
Deferment Rate:	5.50%
Uplift to Freehold VP:	1%
Marriage Value Split:	50:50:00

#### Tribunal's Determined Inputs

Existing Lease Value:	£92,000
Extended Lease Value:	£165,000 (improved)
Value of Improvements:	£7,500
Extended Lease Value:	£157,500 (unimproved)
No Act World Adjustment:	11.10%

#### Freeholders Present Interest

Term

Ground Rent	£	33.00	£	475.42
YP 43.76 years @ 6.5%		14.4068		

Reversion

Long Leasehold Value	£	157,500.00		
Freehold Uplift 1%	£	1,575.00		
	£	159,075.00		
PV £1 43.76 years @ 5.5%		0.0960	£	<u>15,271.20</u>
			£	15,746.62

#### Freehold Proposed Interest

Long Leasehold Value	£	159,075.00	£	123.44	£	15,623.18
PV £1 133.76 years @ 5.5%		0.0007760				

## Marriage Value

### Proposed Interests

Freehold Proposed Interest	£	123.44		
Extended Long Leasehold Value	£	157,500.00	£	157,623.44

less

### Existing Interests

Freehold	£	15,746.62		
Existing Leasehold Value	£	92,000.00		
Less No Act World @ 11.10%	£	<u>10,212.00</u>	£	97,534.62

Marriage Value £ 60,088.82

Apportionment of Marriage Value 50% £ 30,044.41

£ 45,667.59  
**say £ 45,670.00**

## Appendix Two

### The Tribunal's Analysis of Comparables

(with the value of 29 Mitford Drive adjusted)

Property	105 Walsgrave Drive		29 Mitford Drive		90 Rowood Drive		27 Mitford Drive	
Date of Sale		11/10/2019		16/04/2019		27/09/2018		27/06/2018
Sale Price		£ 86,500.00		£ 95,000.00		£ 90,000.00		£ 95,000.00
Deductions	%age		%age		%age		%age	
Garage/Central Heating		£ 2,000.00		£ -		£ -		£ 2,000.00
		£ 84,500.00		£ 95,000.00		£ 90,000.00		£ 93,000.00
Relativity at sale date	65.77		67.45		68.02		66.9	
Relativity at valuation date	65.61		65.61		65.61		65.61	
Adjustment for lease length	0.243%	£ 205.56	2.728%	£ 2,591.55	3.543%	£ 3,188.77	1.928%	£ 1,793.27
		£ 84,294.44		£ 92,408.45		£ 86,811.23		£ 91,206.73
Additions								
Indexation at Sale Date	119.3		119.8		119.4		120.5	
Indexation at Valuation Date	124.2		124.2		124.2		124.2	
Indexation adjustment	4.11%	£ 3,462.22	3.67%	£ 3,393.97	4.02%	£ 3,489.90	3.07%	£ 2,800.54
Result		£ 87,756.65		£ 95,802.42		£ 90,301.13		£ 94,007.26
Average		£ 91,966.87						
<b>Say</b>		<b>£ 92,000.00</b>						