



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

Case Reference	:	LON/00AW/OAF/2013/0060
Property	:	24 Melbury Road, London W14 8AE
Applicant	:	Jove Properties (1) Limited and Jove Properties (2) Limited
Representative	:	Pemberton Greenish LLP
Respondent	:	Leen Kanazeh and Alexandre Farid Issa El-Khoury
Representative	:	Bishop & Swell LLP
Type of Application	:	Enfranchisement
Tribunal Members	:	Judge Robert Latham Philip Tobin FRICS MCI Arb
Date and venue of Hearing	:	13 and 14 January 2015 at 10 Alfred Place, London WC1E 7LR
Appearance for Applicant	:	Christopher Heather (Counsel)
Appearance for Respondent	:	Piers Harrison (Counsel)
Date of Decision	:	17 February 2015

DECISION

The Tribunal determines that that the premium payable by the Respondent in respect of the enfranchisement of 24 Melbury Road, London, W148AE is £516,000. This is computed on the basis of a relativity rate of 73.5%. We adopt the computation at Appendix 5 of the report of Frances Joyce FRICS.

Introduction

1. This is an application made pursuant to Section 21(1)(a) of the Leasehold Reform Act 1967 to determine the price payable on the enfranchisement of 24 Melbury Road, London, W14 8AE (the property"). The terms of the conveyance have been agreed.
2. The sole issue which we are asked to determine is the relativity rate which will inform the calculation of the premium that is payable. The Applicant landlord argues for a premium of £516,000, based on existing lease value of £1,618,672 (relativity of 73.5%). The Respondent tenant argues for a premium of £366,404, based on existing lease value of £1,917,902 (relativity 86.51%). The difference in the relativity rate, results in a difference of some £150,000 in the premium that is payable.
3. A number of recent decisions of the Upper Tribunals ("UTs") have highlighted the problem that First-tier Tribunals (FTTs) have to confront in determining relativity. We have been required to revisit the recent decision of the UT in *Latifa Kosta v F.A.A.Carnwath and Others (47 Phillimore Gardens)* ("Kosta") [2014] UKUT 319 (LC); [2014] L&TR 25. We are mindful of HHJ Huckinson's observations at [143]:

"We would conclude by saying that this Tribunal, its predecessor, the LVTs and indeed the profession at large has, unsuccessfully thus far, been seeking to find a settled position on relativities for leasehold properties".

4. This case again highlights the need for guidance in determining relativity. In the absence of such guidance whether from the legislature, the courts or the profession, FTTs have no option but to determine the issue on the basis of the quality of the evidence adduced by the parties. Both parties are compelled to incur the substantial costs of both lawyers and experts. This is a recipe for wasted expenditure and inconsistent outcomes.
5. Mr Alex Ingram Hill, an expert called by the Respondent, frankly conceded that when he gave evidence in *77 St Peter's Court* (CAM/11UC/0RL/2013/128), he had been unable to advance the valuation approach that he would have preferred because of the limited means of his client. The current situation is far from satisfactory.

Background

6. The background facts are as follows:
 - (i) The property: 24 Melbury Road, London W14 8AE.
 - (ii) Date of Tenant's Notice: 30 August 2013.
 - (iii) Date of Application to the Tribunal: 19 November 2013.

- (iv) Tenant's leasehold interest:
 - Date of Lease: 29 September 1962.
 - Term of Lease: 99.75 years from 29 September 1962.
 - Ground Rent: currently £3,080 pa with review with effect from 25 June 2029.
 - Unexpired Term at Valuation Date: 48.82 years.
 - (v) Landlord: Jove Properties (1) Limited and Jove Properties (2) Limited.
 - (vi) Tenant: Leen Kanazeh and Alexandre Farid Issa El-Khoury.
7. On 6 January 2015, the parties had agreed the following:
- (i) Valuation Date: 30 August 2013.
 - (ii) Unexpired Term: 48.82 years.
 - (iii) Gross internal area: 147.7 sq metres.
 - (iv) Unimproved freehold value: £2,300,000.
 - (v) Capitalisation Rate: 5.25%.
 - (vi) Deferment Rate: 4.75%.
 - (vii) Current ground rent: £3,080.
 - (viii) Rent on review: £11,500 pa with effect from 25 June 2029.
 - (ix) Treatment of onerous ground rent: 0.1% of the unimproved freehold value.

The Hearing

8. The hearing of this application took place on 13 and 14 January 2015. The Applicant, landlord, was represented by Mr Christopher Heather. He adduced evidence from Ms Frances Joyce FRICS. The Applicants relies on transactional evidence and the traditional graph-based approach.
9. The Respondent, tenant, was represented by Mr Piers Harrison. He provided us with a Skeleton Argument. He adduced evidence from Mr James Wyatt FICS and Mr Alex Ingram-Hill MRICS. The Respondent relies on the relatively novel hedonic regression approach. This was considered, but rejected, by the UT in *Kosta*. Mr Harrison sought to persuade as that the flaws in this methodology which were identified by the UT have now been addressed.
10. Both approaches have their drawbacks which have been discussed by the UT in a number of decisions. We must determine the approach which we prefer on the evidence adduced before us.

Relativity

11. Leasehold relativity is the value of the property held on the existing lease divided by the freehold value of the property. This is expressed as a percentage. This is inevitably a hypothetical construction as no property can simultaneously exist or be marketed in both states of tenure.

12. The difficulty in determining relativity is addressed by the learned editors of “Hague on Leasehold Enfranchisement” (6th Ed, 2014) at [9.50]:

“Particular difficulties can arise in the determination of the value of the tenant’s interest because of the statutory assumption that the tenant has no rights of acquisition under the Act. The right to enfranchise has been widely extended so that it has become more difficult to find comparable market evidence of the sale of a lease that does not have attached to it the right to claim the freehold. To try to deal with this problem, relativity graphs have been produced by valuers. These plot the relativity between freehold and leasehold values, generally based on negotiated settlements and agreements under the enfranchisement legislation. To that extent, they are necessarily subjective and can therefore be subject to the same criticisms as other settlement evidence. Such evidence is useful however, as a check mechanism against market evidence but can only give a general guide to trends and should not be relied upon as definitive without other supporting evidence. An attempt to create a theoretical model to determine relativity failed and was described as “unsound.”

13. In footnotes, the Editors summarise the approach adopted by the Upper Tribunal:

“In *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] R.V.R. 39 the Lands Tribunal held that settlements and tribunal decisions were unreliable as evidence of the correct relativity of leases to freeholds. At [57], it considered that graphs of relativity published by firms of valuers are capable of providing the most useful guidance and expressed the hope that the RICS would be able to produce a standard graph.

In October 2009, the RICS published its report on Graphs of Relativity, in response to the suggestion. The Leasehold Relativities Group, chaired by Jonathan Gaunt QC, and comprising eight surveyors, considered all the published graphs, but were unable to agree upon definitive graphs to be used as evidence by LVTs, as had been proposed by the Lands Tribunal. The report reproduced all the published graphs together with details of the data that lies behind each.

In *Re Coolrace Ltd and others’ appeal* [2012] UKUT 69 (LC); [2012] 2 E.G.L.R. 69 (a case under the 1993 Act where the LEASE graph of relativities was adopted when there was no reliable transactional evidence available) the member P.R. Francis FRICS reflected that the RICS report did however represent the broadest study on relativity presently available. He suggested that a single line graph derived from the evidence in that report might prove a

useful guide for valuers in circumstances where reliance on such information was the only available option”

14. The “attempt to create a theoretical model” to which the editors of Hague refer, is the decision of the UT in *Nailrile Ltd v Cadogan* [2009] 2 EGLR 151 (“*Nailrile*”). Mr Beckett, called on behalf of the leaseholders, had sought to develop a theoretical model based on market transactions. HHJ George Bartlett QC, the President, welcomed the attempt to devise a universal and objective model which would avoid the need to rely upon “disputed graphs of relativity” (at [202]). He found the research to be “thorough, thoughtful and clearly explained”. However, he concluded that the approach to be unsound. Transaction evidence was also found to be of limited assistance and the UT fell back on graphs.
15. The current application was stayed on 14 March 2014, pending the determination of the appeal in *Kosta*. In *Kosta*, the unexpired term was 52.45 years. The landlord argued for a relativity of 76% based on the traditional graphs. The tenant argued for a figure of 87.04% based on the hedonic regression model which had been developed by Parthenia Research Limited (“Parthenia”). Dr Bracke was the main author of the original research which started in 2011. The model seeks to predict relativity for different lease lengths constructed on a large amount of data in respect of sales between 1987 and 1991 so as to exclude to value of “Act Rights”. The FTT concluded that it could not rely on the evidence of Dr Bracke, albeit that it was a serious minded independent analysis of the market data. It preferred the evidence adduced by the landlord.
16. The UT (HHJ Huskinson and Peter McCrea FRICS) heard the appeal over four days between 25 June and 2 July. The judgement is dated 3 August. The appeal was by way of a rehearing. The Appellant, tenant, adduced evidence from (i) Dr Bracke, an economist; (ii) Prof Sean Holly of Cambridge University who had peer reviewed Dr Bracke’s research; and (iii) Mr Ingram-Hill MRICS of John D Wood, but who was not called as an expert. The landlord adduced evidence from (i) Prof Lizieri who analysed and commented on Dr Bracke’s work and (ii) Mr French FRICS of Savills who was unable to identify any relevant comparable transactions, but rather relied on the RICS graphs. Parthenia intervened in the appeal and were represented by Counsel. On 25 June, Parthenia secured an order preventing the parties from disclosing information relating to the John D Wood database upon which the research was based, the cleansed datasets and the details of Dr Bracke’s methodology (“the confidential information”).
17. We summarise the conclusions of the UT in so far as this is relevant to the issues which we are required to determine:
 - (i) The landlord cross-examined Dr Bracke extensively as to his financial interest in the model. Dr Bracke described how the confidential information was the product of many years of work

based upon a professional lifetime of experience. He wished to maintain the confidentiality of this information so he could exploit it in the future for commercial gain. He had transferred the relevant intellectual property rights to Parthenia who were meeting the costs of both his appearance and that of Prof Holly. The UT found the situation “most unusual” (at [11]). However the UT found Dr Bracke to be an impressive witness who presented his work in a fair manner and who was willing to accept criticisms to his methodology. The UT therefore rejected the landlord’s argument that they should either ignore or downgrade the weight of his evidence on the grounds of the alleged partiality or lack of genuine independence.

(ii) The UT identified a number of flaws in the hedonic regression methodology as a result of which they concluded that “Dr Bracke’s work is unable to provide any reliable assistance to us in relation to the existing lease value as at the valuation date” (at [132]). The FTT had rejected his evidence on the basis that (a) his methodology had not been peer reviewed; and (b) there had been valuation evidence to support it. Parthenia sought to address these issues by the evidence adduced at the rehearing. The UT concluded that they were unable to rely on Dr Bracke’s evidence in “the present case” and highlighted the Appellant’s failure to adduce any valuation evidence “to explain and support” two of Dr Bracke’s key propositions (at [144]). This Tribunal must now consider whether Parthenia has now addressed the flaws identified by the UT at [116] – [122]).

(iii) Having rejected the evidence of Dr Bracke, the UT fell back to the evidence of Mr French and his reliance on the RICS graphs. The UT noted the potential weaknesses in these graphs (at [136] – [137]). However, the UT considered that the well-informed hypothetical purchaser would have regard to the strengths and weaknesses in these graphs (at [139] – [140]). The UT affirmed the average of 76% which had been adopted by the FTT. The UT noted that the John D Wood graph showed a figure of 82.5% which was substantially higher than all the other graphs. The UT concluded that the that the successful hypothetical purchaser would not be prepared to base their bid upon this graph, because they would see that it was out of step with all these other graphs (at [142]).

(iv) At [117], the UT recorded that it was unfortunate that no valuation evidence from a valuer had been called from the appellant and that no evidence explaining and justifying any of the graphs published by the RICS had been called by the respondents. The UT was therefore compelled to decide the case on the limited material before them. The absence of this more extensive valuation evidence would lessen the assistance that the decision could provide in other cases. The inevitable consequence would be

similar disputes about relativity being contested in future cases on more extensive evidence

The Evidence and Submissions of the Parties

Hedonic Regression

18. Mr Harrison, for the Respondents tenant, argued for a relativity of 86.51% based on the Parthenia model of hedonic regression. He adduced evidence from James Wyatt FRICS and Mr Alex Ingram-Hill FRICS. Mr Wyatt is a director of Parthenia. Dr Bracke, the main author of the original report, is now an economist with the Bank of England and no longer has an active role with the Company. Mr Wyatt continues the work with Mr Ted Pinchbeck from the London School of Economics.
19. Mr Wyatt summarised the relative merits of hedonic regression over reliance on RICS graphs. Hedonic regression should be preferred because it is more scientific and robust. If the methodology is sound, it has the great advantage of being based on a much greater sample of data. Further, this data is based on actual transactions, rather than settlements or expert opinion.
20. Mr Wyatt contends for a relativity of 86.51% which is based on an average of three models: (i) Model 1 – 87.56% based on 7,969 flat and higher value house sales and few property attributes; (ii) Model 2 – 85.13% based on 7,327 sales with an extensive list of property attributes; (iii) Model 3 – 86.76 based on the 2,583 sales based on verified sales. Figure 5 (at p.31) sets out the data in graphs. At [7.6] he considers the 95% “confidence bands” for each model. This varies from 84.1 to 87.63% for Model 1 to 76.41 to 97.12% for Model 3. The much wider confidence band for Model 3 reflects the smaller number of transactions.
21. Mr Wyatt described how the data base is extracted from the internal records of John D Wood and the Loures-com subscription service. These properties are all specified areas of Prime Central London and relate to sales between January 1987 and December 1991. The breakdown of the sample of 7,969 properties is to be found at Table 1 (p.15). Only higher value houses are included to reflect the “No-Act world”. The mathematical analysis utilises a statistical procedure based on hedonic regression. The data, methodology and results have been replicated by Prof Holly.
22. At [8.4] of his report, Mr Wyatt describes how the data has now been expressed differently to address the criticisms of the curves made by the UT in *Kosta* at [124]. These refinements were made at the suggestion of Professor Lizieri. There are other areas where no refinements have been made. For example, Mr Wyatt suggests (at [8.3]) that the UT were

incorrect to read the Model 1 curve as peaking at around 80 years and then dipping.

23. At the commencement of his evidence, Mr Wyatt had to make a number of corrections to his report: [5.7] - the sample being 2,146 rather than 2,157 sales; [6.16] - the bootstrapping process had only been repeated 1,000, rather than 10,000 times; [7.4] - the discount for lower ground floor flats being 5.3-8.8% rather than 10-13%; and Table 6 - the log for a house being 0.283 rather than 0.097. The most significant change only became apparent during the course of his evidence, namely that all the “confidence bands” at p.32 were incorrect. These did not reflect his conclusions at p.34. He explained that this mistake came from cutting and pasting from another report. Mr Heather suggested that there might be other mistakes which were not so patent.
24. Mr Harrison also adduced evidence from Mr Alex Ingram-Hill MRICS. He sought to give an expert opinion as a surveyor valuer that the Parthenia hedonic approach to relativity was preferable to that to be derived the RICS Graphs. He sought to persuade us why we should not rely on the recent decision of the UT in *Kosta* (see [5.1]. He appreciated that the Parthenia research showed a significantly higher relativity than the conventional curves. Since the two approaches were largely divergent, he did not see any merit in comparing the results or attempting to use the curves to provide a cross-check to regression analysis. He recognised that he was neither a mathematician nor a statistician and was therefore not competent to deal with the methodology used by Parthenia. In cross-examination, Mr Ingram-Hill accepted that he was willing to rely on the RICS graphs when he gave expert evidence in other cases and was referred to his evidence on 31 January 2014 in *77 St Peter’s Court*.
25. Mr Harrison seeks to distinguish *Kosta* on a number of grounds:
 - (i) The methodology had now been refined to address the concerns raised at [24] of *Kosta*;
 - (ii) On the valuation date of 30 August 2013, the hypothetical purchaser would have had knowledge of both the Parthenia research and the RICS graphs (see [139] of *Kosta*);
 - (iii) The approach adopted by the UT at [139] – 142] was inconsistent with the Court of Appeal decision in *Kutchukian v Keepers and Governors of FGS of John Lyons* [2013] 1 WLR 2842. We were referred to [31] – [35] of the judgment of Lloyd LJ. Mr Harrison contended that the assessment of relativity was a valuation issue akin to an issue of law. The UT should have determined the correct approach to assessing relativity, rather than having regard to what would have been in the mind of a hypothetical purchaser.

26. Mr Heather, for the Respondents landlord, referred us to [5] and [116] of *Kosta*. He argued that we are confronted by the same choice of methodology and should adopt the same approach as the UT. He argued that *Kosta* was recent and authoritative and set out the approach to valuation that we should follow.
27. Mr Heather referred us to the criticisms that the UT had made of the hedonic regression model in *Kosta*. At [124], He suggested that Model 2 (Figure 9 at p.31) was still flat between 75 and 85 years. Some data points still seemed to be above 100%. Mr Heather also referred us to the flaws identified at [126] of *Kosta*. He suggested that none of these had been addressed:
- (1) The point regarding alleged anticipation in 1987/91 of an extension of enfranchisement rights (thereby inflating the value of short leaseholds).
 - (2) The point concerning the fact that section 9(1A) requires there to be assessed the amount which the property, if sold on the open market by a willing seller at the valuation date, might be expected to realise assuming that the existing lease carried with it no Act rights but that the market in which it was being offered for sale included other leaseholds which would carry with them Act rights (in Dr Bracke's study all the relativities derived were for a lease without Act rights offered for sale in a market where all other leases also lacked Act rights).
 - (3) The point concerning the difference in the market, as between 1987/91 on the one hand and the valuation date on the other hand, of the mix of properties available with short leases forming a much higher proportion of properties on the market at the earlier dates as compared with the valuation date.
 - (4) The point concerning whether the make-up of the pool of potential purchasers in the market, and the aspirations of such purchasers, are different at the valuation date as compared with the earlier dates.
 - (5) The point concerning changes in the economic climate in general and in discount rates in particular as between 1987/91 and the valuation date and whether these may impact upon the existing lease value at the valuation date.

The Traditional Approach based on Transactions and Graphs

28. Mr Heather, on behalf of the Applicant landlord, argued for a relativity of 73.5% based on transactional evidence and the RICS graphs. He described this as a "recognisable, simple and valid approach". In *Kosta*, the UT determined a relativity rate of 76% for an unexpired term of 52.45 years at a valuation date of 13 October 2013. This was highly relevant

given the evidence of the market transaction of the subject property in April 2011 when there was an unexpired term of 51.22 years.

29. Mr Heather adduced evidence of Ms Frances Joyce FRICS, a very experienced valuer who has valued some 40-50 properties on the Ilchester Estates since 2004. Ms Joyce refers to "Kosta" relativity, suggesting that the RICS graphs have now received the seal of approval from the UT, despite their criticism at [136] - [137]. Her analysis of seven of the RICS graphs and her "Kosta" average is provided at Appendix 4.
30. Ms Joyce justifies her figure of 73.5% for relativity on three grounds:
 - (i) The Local Market: The subject property was purchased by the Respondents in April 2011 for £1,650,000, when the unexpired term was 51.22 years. She computed the existing lease value to be £1,480,000 (see [7.4] of her report) and the equivalent adjusted freehold value to be £1,979,300 (see [7.5]) from which she computed a leasehold relativity of 74.77%. This supported the "Kosta" average of 75.07 (at Appendix 4).
 - (ii) The "Kosta" Relativity: Having satisfied herself that the "Kosta" relativity of 75.07% was appropriate for a term of 51.22 years when sold in 2011, she saw no reason why the "Kosta" relativity would not be equally relevant at the valuation date of 30 August 2013, when the unexpired term was 48.82 years. She therefore derived a figure of 73.5% from her "Kosta" average of the seven RICS graphs at Appendix 4.
 - (iii) She drew further support for her relativity figure of 73.5% from her computation "Existing Lease Value Adjusted from Date of 2011 Sale to Valuation Date". Her starting point was the sale of the leasehold interest in April 2011 for £1,650,000. In computing the adjusted leasehold value, she made a 7.5% reduction for "Act rights". Her adjusted leasehold value of £1,682,571 was divided by the agreed freehold value of £2,300,000 to compute a relativity rate of 73.16%.
31. Mr Ingram-Hill did not seek to challenge the adjustments which Ms Joyce had made. He rather argued that her methodology was wrong. In particular, he did not challenge either the adjustment of £50,000 for improvements or the selection of the seven RICS graphs used in computing the "Kosta" average.
32. Under cross-examination, Mr Ingram-Hill was asked to apply the hedonic regression relativity rates to the £165,000 purchase price that the Respondents had paid for 51.22 leasehold interest in April 2011. The figures suggested an unduly low freehold vacant possession value both in April 2011 and August 2013, compared with the agreed figure at the valuation date of £2,300,000. Mr Ingram-Hill's response was that any local transactional evidence was tainted because it was influenced by the RICS graphs.

33. Mr Harrison argued that Ms Francis was doing no more than relying on the RICS graphs. He criticised the adjustment of 7.5% for “Act Rights” which Ms Francis had made in both her calculations based on the April 2011 sale. He argued that this figure of 7.5% was not independent, but was rather based on the “Kosta” graphs. He relied on the observation by the President in *Nailrile* at [215], namely that there was a degree of “circularity”. We note, however, that the President did make a 7.5% reduction in that case for “Act rights” (at [228]).
34. Mr Harrison also criticised Ms Francis for not making any adjustment for the onerous ground rent (see [7.4] of her report. He referred us to the Lands Tribunal decision in *Carl v Grosvenor Estate Belgrave* [2000] 3 EGLR 79 at p.6. This was not an issue on which Mr Ingram-Hill had given any expert evidence.
35. Mr Harrison referred us to page 6 of the RICS research which identifies the inherent problem in relying on open market sales, namely the absence of any reliable evidence in respect of adjustments for “Act rights”. Ms Joyce had only been involved with properties on the Ilchester Estate since 2004 and thus had no direct knowledge of pre-Act transactions. He reminded us of the difficulties which RICS itself recognises in the use of the graphs as discussed at [136] – [138] of *Kosta*.
36. Ms Francis explains how she derived her 7.5% for “Act rights” for an unexpired term of 51.22 years at [7.3] of her report. She relies upon the approach adopted in *38 Cadogan Square* [2011] UKUT 154 (UC) at [78] – [79] in which the UT relied on the Savills 2002 enfranchisable graph as evidence of market value, from which she has deducted the “Kosta” average to reflect the “no Act world”.

The Tribunal’s Decision

37. As Carnwath LJ observed in *Earl Cadogan v Sportelli* [2008] 1 WLR 2142(at [99]), the UT is now a “superior court of record” under the Tribunals, Courts and Enforcement Act 2007 whose principal role is to lay down guidelines to promote consistent practice in land valuation matters. The rate which a FTT adopts for relativity should not depend upon the evidence adduced in the individual case. However, this remains the current position.
38. Our task is therefore to determine whether we are satisfied on a balance of probabilities that Parthenia have now come up with a robust methodology which is to be preferred to the traditional approach of relying on transactional evidence and the RICS graphs. Both these approaches have significant drawbacks which have been identified in recent decisions by UTs and which were highlighted by the experienced Counsel who appeared before us.

39. Mr Harrison argued that hedonic regression should be preferred, because it is more scientific and robust. We are not convinced of this, since valuation is as much an art as a science. Unlike the UT in *Kosta*, we did not have the benefit of distinguished academic evidence. We had to rely on the evidence of Mr Wyatt, a chartered surveyor who admitted he was neither an expert in mathematics nor statistics. He found it necessary to make a number of corrections to mistakes in his report. It appeared that much of his evidence relied on the opinions of other experts. He conceded that parts of his report had been “cut and pasted” from reports prepared by others.
40. We accept many of the arguments about the relative merits of hedonic regression over reliance on graphs in calculating relativity between leases and freeholds. However, we take note of the shortcomings highlighted by the UT in *Kosta*. These have not, in our opinion, been adequately addressed in Mr Wyatt’s evidence.
41. The traditional calculation of relativity is made by reference to specific comparables, adjusted by expert judgment for differences in location, timing, amenities, etc. Such graph-based valuations are subjective and require individual adjustments; whereas under the hedonic regression model, the adjustments are made objectively and consistently. Nevertheless, hedonic regression data is “cleaned and processed” using predetermined theoretical variables to strip out differences between thousands of properties, spread over very wide areas.
42. These refinements have not been explored. This is no criticism of Mr Heather. This is an inevitable consequence of Parthenia’s decision to maintain the confidentiality of their methodology so that they can exploit the model for commercial gain. Until this methodology is better understood and more widely accepted, it is unlikely to influence the mind of the well-informed hypothetical purchaser.
43. Mr Wyatt suggested that the UT decision in *Kosta* had been inappropriate. We prefer to follow the guidance that the UT has provided. We would need clear and cogent evidence to persuade us that Parthenia have now remedied the flaws which the UT identified. The evidence adduced before us falls far short of that threshold.
44. The Respondent’s relativity calculation is made by Ms Joyce. It was based on the actual sale of the subject property in 2011, also that of No. 28 Melbury Road, using adjustments that she made from experience and precedent.
45. For the Applicant, Mr Wyatt produced his report using hedonic regression methodology and Mr Ingham-Hall produced a valuation that relied entirely on an average of Mr Wyatt’s hedonic regression percentages of freehold value. Neither Mr Wyatt nor Mr Ingram-Hall

challenged Ms Joyce's adjustments for tenants' improvements and other factors, except to say that her starting figure of the actual sale price was fundamentally flawed. Mr Ingram-Hall did not provide any alternative to back-up his valuation based on hedonic regression. He rather suggested that all locally based transactional evidence was tainted, because it had been influenced by the standard graphs. He accepted that both hedonic regression and graph-based methods were flawed, albeit that he thought that hedonic regression was far more robust and was to be preferred.

46. This Tribunal is required to decide whether to accept one or other of the two valuation methods in issue. There are merits and drawbacks in both sides' arguments. Our decision comes down to the quality of the expert evidence adduced before us and our assessment of the witnesses. Ms Joyce's evidence was consistent and we were impressed by her local knowledge and experience. Mr Wyatt made a number of errors in his report which required correction. Mr Ingram-Hall relied entirely on Mr Wyatt's hedonic regression arguments. He had failed to spot the patent errors in the report. He based his valuation thereon and did not provide any alternative or crosscheck.
47. Ms Joyce based her evidence on both the RICS graphs and on the local transactional evidence. Whilst there is some circularity between these two approaches, the transactional evidence does provide a useful crosscheck. On the other hand, as Mr Heather explored through cross-examination, the local transactional evidence tends to undermine the hedonic regression model upon which Mr Ingram-Hall sought to rely. Mr Ingram-Hall was forced to fall back on his argument that all locally based transactional evidence is tainted and therefore of no value.
48. On the basis of the evidence adduced before us, we have no hesitation in preferring the Mr Joyce's evidence and methodology. We accept her 7.5% allowance for relativity in this particular case. We accept that this is a subjective judgment. Nevertheless it is based on her expert opinion and her considerable experience. This includes her specialist local knowledge of the Ilchester Estates.
49. Ms Joyce's calculation of the premium is at Appendix 5 of her report. The relativity rate is the only issue in dispute. We approve her computation of the premium in the sum of £516,000.

Robert Latham
Tribunal Judge

17 February 2015