



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

Case reference : **BIR/00CR/OLR/2020/0024**

Property : **3 Church Court
Parkfield Road
Stourbridge
DY8 1HA**

Applicant : **Ms Barbara Elizabeth Bazso**

Representative : **Nick Plotnek Associates**

Respondent : **J H Watson Property Investment Ltd**

Representative : **Midland Valuations instructed by Howarth &
Co solicitors**

Type of application : **Application under Sections 48(1) and 91(2) of
the Leasehold Reform, Housing and Urban
Development Act 1993 for a determination of
the premium payable for the grant of a new
lease of the Property**

Tribunal members : **G S Freckelton FRICS (Chairman)
N Wint B.Sc. FRICS ACI Arb**

Venue : **The matter was dealt with by a remote Skype
hearing**

Date of Hearing : **6th August 2020**

Date of Decision : **2nd September 2020**

DECISION

BACKGROUND

1. This is an application by Ms Barbara Elizabeth Bazso (“the Applicant”) for determination of Premium or other Terms of Acquisition of a new lease in respect of 3 Church Court, Parkfield Road, Stourbridge, DY8 1HA (“the property”).
2. The Respondent is the landlord of the property. The original lease is dated 21st January 1997 for a term of 99 years from 1st September 1995 between Contour Developments Limited and Miss Inga Crampin at an initial Ground Rent of £50.00 per annum for 33 years rising to £100.00 for the next 33 years and then £200.00 for the remainder of the term.
3. The Notice of Claim to Exercise the Right to acquire a new lease by a qualifying tenant under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) was served by the Applicant on the Respondent on 29th November 2019.
4. The term proposed for the new lease was the existing unexpired term of the existing lease term plus a 90-year lease extension all at a peppercorn (nil) ground rent.
5. The Premium proposed by the Applicant was £3,540.00.
6. The Respondent served a Counter Notice pursuant to Section 45 of the Act on 22nd January 2020. The Counter Notice was within the time allowed for service of such Notice.
7. By its Counter Notice the Respondent admitted the Applicant’s right to acquire a new lease of the property for a term of 90 years in addition to the existing term at a peppercorn rent and at a Premium to be agreed. The Premium proposed by the Applicant of £3,540.00 was not agreed but a counter proposal with a Premium of £11,000.00 was made.
8. On 2nd June 2020 the Applicant made an application to the First-tier Tribunal for the Determination of Premium or other terms of Acquisition remaining in dispute. No application has been made for Determination of Reasonable Costs. The Application was received by the Tribunal on 5th June 2020.
9. On the same date (5th June 2020) the Tribunal issued Directions following which Submissions were made on behalf of both parties.
10. The Tribunal understands from the parties’ submissions that the following matters have been agreed:
 - 1) The Valuation date is 29th November 2019.
 - 2) The Ground Rent is currently £50.00 per annum rising to £100.00 per annum in 2028 and £200.00 per annum in 2061.
 - 3) A Capitalisation Rate of 6% at all three stages of the rent.
 - 4) A Deferment Rate of 5.5%.
 - 5) The value of the Extended Lease in the sum of £121,000.00.
 - 6) An uplift of 1% to Freehold Vacant Possession Value (FHVP).

11. As the above matters have been agreed by the parties the Tribunal has not considered these aspects of the valuation. The Tribunal has not raised issues of valuation beyond those raised by the parties.
12. The Tribunal was pleased to note that the parties had endeavoured to narrow the issues between them which is an obligation under paragraph 3(4) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Tribunal Rules”). However, the following items remained in dispute:
 - 1) The present lease value and the quantum of Relativity. The Applicant contends 92.30% Relativity and the Respondent 86.95%
 - 2) The unexpired term. The Applicant contends 74.75 years and the Respondent 74.81 years.

THE INSPECTION

13. Due to the Covid-19 Pandemic, in accordance with the revised Tribunal Regulations the Tribunal was unable to inspect the property. This was accepted and agreed by the parties.
14. Attached to the lease is a layout plan of the property from which the Tribunal deduces that it is a ground floor flat approached from a communal entrance hall. The flat itself comprises a hallway, open plan living room/kitchen, two bedrooms and bathroom. There is understood to be an allocated car parking space.

THE HEARING

15. Due to the Covid-19 Pandemic the hearing was held remotely via the HMCourt Skype system.
16. The Applicant was represented by Mr N Plotnek of Nick Plotnek Associates and the Respondent by Mr J Moore of Midland Valuations.

THE APPLICANT’S SUBMISSIONS

17. The Applicant submitted that there were two substantive issues remaining for determination:
 - 1) The present lease value and the quantum of relativity and;
 - 2) The quantum of the ‘no Act world’ deduction.
18. The Applicant’s representative submitted that he was aware of two properties which provided direct transactional evidence of comparable properties with un-extended leases although he had discounted one of these. These comparables were as follows:
 - 1) 7 Church Court

A one-bedroom flat sold for £85,000.00 on 12th November 2019 with 74.8 years lease remaining unexpired at the date of sale. The Applicant had discounted this property as it was smaller than the subject flat which has two bedrooms.

2) 10 Church Court

A two-bedroom flat sold for £115,000.00 on 11th December 2019 with 74.72 years lease remaining unexpired at the date of sale. The Applicant submitted that he was not aware of any improvements to the flat and understood it was in average condition at the date of sale. He also submitted that it was of similar size to the subject property being in the same block.

19. The Applicant therefore submitted that the only adjustment that needed to be made to the sale price to arrive at a figure for comparison was to make a 'no Act world' deduction. The Applicant was of the opinion that a fair deduction was 2.6% and this produced an existing lease value, with a 'no Act world' allowance of £112,010.00 which he rounded down to £112,000.00.
20. To support his opinion as to the amount of the 'no Act world' deduction the Applicant's representative submitted that the valuation was subject to the hypothetical assumption that the lease being valued does not have the right conferred by statute to either extend the lease or purchase the freehold whereas all other leases in the market at the point of valuation do have these rights.
21. Therefore, in the opinion of the Applicant, whilst the valuation is made with reference to market evidence and that the date on which the statutory notice was served, there is no market evidence available that exactly replicates the statutory assumption because, with rare exceptions, the situation has never existed. This assumption was often referred to as a 'no Act world' but it was only such for the subject lease and not for any of the other leases in the market.
22. The Applicant submitted that evidence of real world activity was to be preferred where it could be found but because such sales were made in the real world no allowance had been made for those rights.
23. The Applicant further submitted that the Upper Tribunal had given a number of decisions where the level of deduction to be made for the assumed 'no Act world' may be made. It was submitted that in the case of *8 Birkdale Close*, a deduction of 5% was allowed on a lease with 52.22 years unexpired.
24. The Applicant produced a table of deductions for the 'no Act world' at various lease lengths as determined by the Upper Tribunal. Having regard to the table and interpolating the figures it was the Applicant's opinion that a fair and reasonable deduction to the existing leasehold value (with 74.75 years unexpired), to reflect the 'no act world' was 2.6%.
25. As an alternative to the comparable evidence provided, the Applicant had also considered various Relativity Graphs from which he concluded a relativity figure of around 95% was appropriate. At this point this figure was close to the RICS 5-Graph average and for the sake of consistency he had adopted the figure of 94.96% from the RICS 5-Graph average. This had resulted in a present lease value of £112,873.00 which the Applicant had adopted in the valuation.

26. In conclusion the Applicant had applied the 'no Act world' discount of 2.6% to the relativity of 94.96% producing a relativity of 92.36% which he had applied to his valuation. As such the Applicant submitted that the premium to be paid should be £5898.00.

THE RESPONDENT'S SUBMISSIONS

27. The Respondent's representative submitted that in his opinion there was sufficient evidence from the Upper Tribunal to fully endorse the adoption of a relativity of 86.95%. In particular the respondent referred to:

1) *The Trustees of the Sloane Stanley Estate – v – Mundy [2016] UKUT 223 (LC)*

It was submitted that not only were the findings in this case upheld by the Court of Appeal but it was found that the use of the Savills 2002 and 2015 enfranchiseable graphs were the least unreliable and acknowledged that the 2015 graph, with some minor adjustments had the makings of a methodology that valuers and tribunals could use with confidence.

2) *Reiss – v – Ironhawk Ltd [2018] UKUT 311 (LC)*

This case supported the use of the Savills enfranchisement graphs and in particular the 2015 graph which is the results of a more recently compiled set of data. Again, a deduction must be made for the benefit of the act.

3) *Oliyide – v – Elmbirch Properties PLC [2019] UKUT (LC)*

In the opinion of the Respondent this case saw the adoption of the Savills unenfranchiseable graph which the Respondent submitted was technically the most correct because it is a graph based on transactions which most closely represents the hypothetical situation postulated by the act which was a hypothetical asset being a lease without rights under the act being offered for sale in the real market.

The Respondent was also of the opinion that this case was particularly helpful because the property was in the Midlands region as was the subject flat.

28. The Respondent further submitted that the Savills unenfranchiseable and enfranchiseable graphs also supported his opinion as to relativity. For an unexpired term of 74.81 years the Savills graph gave a relativity of 89.02%. In the case of *Reiss–v–Ironhawk* the parties agreed a deduction of 2.5% for Act rights on an unexpired lease term of 75.23 years. The Respondent submitted that if he was to use the same deduction then this would give a relativity of 86.52% which was lower than the figure for which he was arguing.

29. In further support of an 'Act Rights' deduction of at least 2.5% the Respondent provided the table of discounts that was presented at the Upper Tribunal case of *Sinclair Gardens Investments (Kensington) Ltd [2017] UKUT 494 (LC)*.

30. The Respondent referred to a recent First-tier Tribunal decision at *Flat 2, 56 St James Street, Cheltenham*, in April 2020 where the Tribunal stated in relation to the Applicant's use of the Savills Graph, "*In the absence of any useful comparable evidence, or derivatives therefrom, graphs may be used to calculate relativity and therefore endorses the applicants approach.*"
31. However, the Tribunal noted that this was a Section 51 'Missing Landlord' application so no submissions were made on behalf of the Respondent which could have provided an alternative to and influenced the Tribunal's comments in that case.
32. The Respondent also referred to a further case of *34 St James Court, St James Road, Croydon* in February 2020 where the Tribunal predominantly used sales evidence and then applied the discount to reflect Act rights but noted "*Our figure of 75.40% [relativity] is not out of line with either the 2016 Savills unenfranchiseable graph (74.67%) or the 2016 Gerald Eve Unenfranchiseable Graph. These are both PLC. The Beckett and Kay (2017 Revision) graph is significantly out of line with the other 2000 and 2009 RICS non-PLC graphs. It is not necessary for us to research the well-known criticisms of these graphs.*"
33. The Respondent was therefore of the opinion that it was significant that the Tribunal used the two unenfranchiseable graphs as a benchmark with which to compare its own findings.
34. In conclusion the Respondent proposed relativity of 86.95% and submitted that the premium to be paid should be £9717.00.

THE UNEXPIRED TERM

35. At the hearing both the parties agreed that the unexpired term should be 74.75 years.

GENERAL DISCUSSIONS

36. During the hearing discussions took place between the parties and the Tribunal during which the parties further amplified the evidence provided in their written submissions.
37. During the discussions it was submitted by the Applicant:
- 1) That the transactional evidence in respect of the sale of number 10 Church Court was supported by the Savills 2015 graph and that the recent decision of the Upper Tribunal in the case of *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* supported the use of relativity graphs.
 - 2) That no adjustment was required for any change in market conditions between the date of valuation in respect and the sale date of 10 Church Court as there was only some 13 days between them.
 - 3) That as far as the Applicant was aware number 10 Church Court was a very similar flat to the property and that he had adjusted the sale price to take account of the 'no Act world'.

38. It was further submitted by the Respondent:

- 1) That more than one comparable sale was required before it could be considered in preference to relativity graphs. In the opinion of the Respondent the Upper Tribunal usually only considered comparables where there were six or more comparable transactions.
- 2) That the guidance provided by the Upper Tribunal in *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* was that the 2016 Savills graph was supported by the Tribunal.
- 3) That the guidance in this case and in the case of *Oliyide-v-Elmbirch Properties PLC [2019] UKUT (LC)* was absolute and should be followed.
- 4) That the Tribunal should be consistent in its approach and adopt the use of relativity graphs.

39. The Applicant agreed that there was a need to be consistent and the Respondent submitted that he was not aware that the Savills 2016 graph had ever been contested. However, the Applicant submitted that the decisions of the Upper Tribunal supported his opinion that open market transactions were the most important but where they were not available graphs could obviously be used. However, in this case there was an open market transaction which the Applicant considered to be relevant. The Applicant also submitted that it was therefore correct to first follow relevant data rather than the relativity graphs.

40. The Tribunal asked the parties how many flats were in Church Court and was informed by both parties that there are approximately 12 flats in total comprising both one- bedroom and two-bedroom properties. The Tribunal is therefore of the opinion that at any time there will be a limited number of direct comparables and considers it is fortunate that number 10 Church Court which was a very similar flat was sold very close to the valuation date with a similar unexpired term.

THE RELEVANT STATUTORY PROVISIONS

41. Chapter II of the 1993 Act confers the rights for the tenant of a flat to acquire a new lease on the payment of a premium calculated in accordance with the provisions of Schedule 13 to the Act. The new lease is for a term equal in duration to the unexpired term of the original lease plus an additional 90 years, and no rent is payable.
42. For the purpose of this application the premium payable for the new lease is the aggregate of the two sums specified in Paragraph 2(a) and (b) of schedule 13.
43. The first of these is the diminution in the value of the landlord's interest in the tenant's flat caused by the grant of the new lease. This is described in paragraph 3 of Schedule 13 and, in short, is the difference between the value of the landlord's interest in the flat prior to the grant of the new lease and the value of its interest once the new lease is granted, in each case assuming the sale on the open market subject to the relevant lease. For the purpose of the assumed sale the tenant is taken not to be a potential buyer and the 1993 Act is taken to confer no right to acquire any interest in any premises containing the tenant's flat or to acquire a new lease of that flat.

44. The second element of the premium is the landlord's share of the Marriage Value created by the grant of the new lease (but no Marriage Value is payable when the unexpired term of the current lease is more than 80 years). By paragraph 4 of Schedule 13 the Marriage Value is the difference between the aggregate of the value of the tenant's interest under the existing lease and the landlord's interest in the flats prior to the new lease being granted on the one hand, and the aggregate of the value of those interests after the grounds of the new lease on the other. The landlord's share of the Marriage Value is 50% of this sum.
45. The determination of the premium therefore requires separate valuations of the existing lease and new lease and of the landlord's interests in the flats before and after the grant of the new lease.

THE TRIBUNALS DETERMINATION

46. The Tribunal noted that both parties agreed:
- 1) That if a relativity graph was used then the Savills 2016 Unenfranchised graph was to be preferred.
 - 2) That the unexpired term was 74.75 years.
 - 3) That there was no need to adjust the sale price in respect of the comparable property at flat 10 Church Court to reflect any change in the market.
47. The Upper Tribunal in *Elmbirch Properties PLC [2017] UKUT 0314 (LC)* at paragraph 59 stated '*Good Market Evidence should always be preferred to relativity graphs where it is available....*'. This course had also been adopted in *The Trustees of the Sloane Stanley Estate – v – Mundy [2016] UKUT 223 (LC)*, *Reiss – v – Ironhawk Ltd [2018] UKUT 311 (LC)* and *Oliyide – v – Elmbirch Properties PLC [2019] UKUT (LC)*.
48. Both parties referred the Tribunal to the case of *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* during the hearing. This case is dated 1st July 2020 and was not available to the parties when their written submissions were made. The parties asked the Tribunal if they could introduce this case at the hearing to which the Tribunal agreed. Both parties submitted that this case supported their submission as to the use of relativity graphs and in the case of the Applicant to the use of such graphs where market evidence was not available.
49. The Tribunal considered the case and it is quite clear that it follows the earlier decisions of the Upper Tribunal. In the Decision, Martin Rodger QC Deputy Chamber President states at paragraph 58 "*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 PLC. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PLC graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all....*"

50. In this case the Tribunal considers that there is relevant transaction evidence which should take precedence over relativity graphs.
51. In this case the Applicant referred to market evidence and relativity graphs both of which, he submitted, supported his valuation of the un-extended lease of £112,000.00 (rounded up to £112,873.00 to follow the relativity graph). The Respondent's proposed an un-extended lease value of £105,210.00 based entirely on relativity graphs. In his written submission the Respondent made no reference to the sale of 10 Church Court.
52. The Tribunal considered the weight it attached to the transaction evidence available. The Applicant relies on the sale of number 10 Church Court whereas the Respondent submits that one transaction is insufficient for it to be considered when not enough is known about the circumstances of the sale. However, the Tribunal was not presented with any evidence to suggest that the sale of number 10 Church Court was anything other than an arm's length open market transaction. Evidence was provided by the Applicant showing that the purchasers were not local and although neither party could provide evidence of sales particulars the Tribunal determined there was no evidence submitted by either party to suggest that this was not an open market arm's length transaction of a very similar flat.
53. Following the Upper Tribunal decisions, the Tribunal determined that it was appropriate to accept the comparable market evidence as a starting point for the value of the unextended lease in this case. In this the Tribunal prefers the evidence of the Applicant as being more persuasive than Savills or Gerald Eve graph-based evidence. The Tribunal determines that the appropriate value is the sum of £115,000.00.
54. The Tribunal then considered the evidence provided by the parties in respect of the deduction for 1993 Act Rights. There is little between the parties. The Applicant contends for 2.6% and the Respondent 2.5%. After consideration the Tribunal adopts 2.6% as submitted by the Applicant which follows the evidence in *Sinclair Gardens*.
55. In his evidence the Applicant also refers to the relativity graph and having arrived at a 'rounded down' figure of £112,000.00 for the unextended lease value by reference to transaction evidence he then adjusts it having regard to the relativity graph to arrive at a figure of £112,873.00.
56. The Tribunal does not accept this reasoning. It is obvious that a relativity graph must be used where there is no comparable evidence and it can of course be used as a check to confirm that the comparable transaction is not significantly out of line with the relativity graph figure which could render it unreliable. In this case the Tribunal considers that the graph-based evidence supports the market evidence and sees merit in using graphs but only as a check. The Tribunal is of the opinion that the valuation arrived at by reference to the transaction evidence is not significantly different from the figure given by the relativity graph and does not require any further adjustment.
57. The Tribunal determines that the comparable transaction value of £115,000.00 should therefore be reduced by 2.6% to arrive at an unextended lease value of £112,010.00.

58. The Tribunal therefore determine the premium payable to be the sum of **£6,332.00 (Six Thousand Three Hundred and Thirty-Two Pounds)** plus costs in accordance with section 60 of the Act. A copy of the Tribunal's valuation is attached at the appendix.
59. Following the substantive part of the hearing the Applicant's representative submitted that his client was aggrieved at having to pay the hearing fee of £200.00. He submitted that the hearing had adduced no new evidence and that the Respondent had acted unreasonably in requesting a hearing. He therefore made an Application for costs under section 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, for reimbursement of the hearing fee.
60. The Respondent submitted that there had been no unreasonable or vexatious behaviour on behalf of the Respondent in requesting a hearing and that it had given the parties the opportunity to refer to the case of *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* which had not been published at the time that the parties had made their written submissions but was relevant to the case.
61. The Tribunal determined that it was not unreasonable for either party to have requested a hearing in this case and refused the Applicant's application under section 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for a reimbursement of the hearing fee. In particular the Tribunal was persuaded that the case of *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* could not have been referred to by the parties if a hearing had not taken place.

APPEAL

62. 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.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)

Date: 2nd September 2020

Appendix – Valuation in respect of 3 Church Court, Parkfield Road, Stourbridge, DY8 1HA

Freeholders Present Interest

Term

Ground Rent	£50.00		
YP 8.75 years @ 6%	<u>6.6569</u>	£332.85	
Ground Rent	£100.00		
YP 33 years @ 6%	14.2302		
PV 8.75 years @ 6%	<u>0.6006</u>	£854.67	
Ground Rent	£200.00		
YP 33 years @ 6%	14.2302		
PV 41.75 years @ 6%	<u>0.0878</u>	<u>£249.88</u>	£1,437.40

Reversion (to Freehold)

Market Value	£121,000		
Add Freehold uplift 1%	<u>£1,210</u>		
	£122,210		
PV 74.75 years @ 5.5%	0.0183		£2,236.44

Freeholders Proposed Interest

Extended Leasehold Value	£122,210		
PV 164.75 years @ 5.5%	<u>0.0001476</u>	<u>(£18.04)</u>	£3,655.80

Marriage Value

1. Proposed Interests

Freehold	£18.04		
Leasehold	<u>£121,000.00</u>	£121,018.04	

2. Present Interests

Freehold	£3,655.80		
Leasehold	£115,000.00		
Less 'No Act World' adjustment 2.6%	£2,990.00	<u>£115,665.80</u>	

Marriage Value		£5,352.24	
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Shared equally			<u>£2,676.12</u>
Total			£6,331.92

Premium to be paid by Leaseholder SAY			£6,332.00
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